

30 SEPTEMBER 1947

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Tuesday, 30 September 1947

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

- - -

Appearances:

For the Tribunal, all Members sitting, with
the exception of: HONORABLE JUSTICE R. B. PAL, Member
from India, not sitting from 1330 to 1600 and HONORABLE
JUSTICE I. M. ZARYANOV, Member from the USSR., not
sitting from 1500 to 1600.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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(English to Japanese and Japanese
to English interpretation was made by the
Language Section, INTFL.)

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1 MARSHAL OF THE COURT: The International Mili-
2 tary Tribunal for the Far East is now in session.

3 THE PRESIDENT: With the Tribunal's permission
4 the accused TOJO will be absent from the courtroom for
5 the first half of the morning session conferring with
6 counsel.

7 . Yamaoka.

8 MR. YAMAOKA: May it please the Tribunal, we
9 offer in evidence defense document 2162. This is an
10 official stenographic record of an answer made by Mr.
11 HIROTA in the House of Peers at the 67th Session of the
12 Imperial Diet on January 25, 1935. I desire to state that
13 we intend to read only the first paragraph of this docu-
14 ment and the first sentence and the last sentence of the
15 last paragraph on the page.

16 THE PRESIDENT: Admitted on the usual terms.

17 CLERK OF THE COURT: Defense document 2162 will
18 receive exhibit No. 3248.

19 (Whereupon, the document above referred
20 to was marked defense exhibit 3248 and received in
21 evidence.)

22 MR. YAMAOKA: I also wish to state, if the
23 Tribunal please, that the mere omission of certain parts
24 of these documents does not mean that we do not intend to
25 rely on them.

1 THE PRESIDENT: More than one Member of this
2 Tribunal has raised the question why you should not read
3 all that you rely upon in these documents. If you don't
4 think a part is worth reading, it is possible that those
5 Members will not read any more than appears in the transcript
6 or consider any more than that.

7 MR. COMYNS CARR: If my friend had said in the
8 beginning what he said just now, we should have objected
9 to the whole of this document as being repetitious.
10 It was only because of what he said earlier that we thought
11 it would be quicker not to object than to object.

12 THE PRESIDENT: Mr. Yamaoka.

13 MR. YAMAOKA: I had hoped, if the Tribunal
14 please, to avoid reading certain parts of these documents
15 which had previously been covered by similar statements on
16 other occasions by the accused HIROTA, in the desire not
17 to burden the Tribunal any more than necessary with de-
18 tails.

19 THE PRESIDENT: Read what you propose to read,
20 Mr. Yamaoka.

21 MR. YAMAOKA: Then I shall read the parts
22 announced by me originally of this exhibit, defense exhibit
23 3248.

24 "STENOGRAPHIC RECORD OF THE HOUSE OF PEERS AT
25 THE 67TH SESSION OF THE IMPERIAL DIET. 25 JANUARY 1935.

1 "Answer of the Minister of State. Minister of
2 State, Mr. Koki HIROTA.

3 "Further, the question as to what is the funda-
4 mental idea of the Japanese foreign policy towards the
5 United States, Great Britain and other countries, I should
6 like to answer as follows. Unfortunately, Japan has been
7 compelled to withdraw from the League of Nations owing to
8 the Manchurian Incident, but this does not mean that Japan
9 has separated herself from the whole world. The League of
10 Nations is a place of conference and not to attend the con-
11 ference does not mean that the diplomatic relations between
12 Japan and those countries which compose the conference will
13 be severed at once."

14 I shall skip to the last paragraph:

15 "In connection with the diplomatic relations with
16 the United States and Great Britain, there is the problem
17 of naval disarmament."

18 I skip to the last line:

19 "If you inquire how I intend to deal with this
20 problem in the future, I would answer, of course, Japan
21 will follow a policy of peace and at this time I feel great-
22 est reluctance even to speculate at this time on measures
23 to be taken in case the effort to reach an agreement turns
24 out to be unfruitful."

25 "We offer in evidence defense document 2168.

1 This is an answer made by Mr. HIROTA to a question
2 in the House of Representatives at the 67th Session of
3 the Imperial Diet on January 26, 1935. We intend to read,
4 if the Tribunal please, only the first and third para-
5 graphs of this document.

6 THE PRESIDENT: Mr. Brown.

7 MR. BROWN: Your Honor, the prosecution objects
8 to this document as repetitive. In view of the ruling
9 announced by you, Mr. President, that all parts of a docu-
10 ment admitted into evidence are part of the evidence, we
11 think it necessary to take objection, however much or
12 little my learned friend may propose to read.

13 THE PRESIDENT: This morning I stated the atti-
14 tude of some Members. Whether they are a majority I do
15 not know.

16 MR. BROWN: I was thinking, your Honor, of your
17 statement the other day that all parts of an exhibit ad-
18 mitted into evidence were part of the evidence, at least
19 in the view of some Members of the Tribunal.

20 THE PRESIDENT: Mr. Yameoka.

21 MR. YAMAOKA: If the Tribunal please, according
22 to the practice to which I have been accustomed, once a
23 document is admitted into evidence the whole document is
24 in evidence.
25

1 THE PRESIDENT: But if you don't think it worth
2 while reading a part of a document, the Tribunal may not
3 bother themselves with that part; but I hope that won't
4 encourage you to read the whole of a document in all cases.

5 Mr. Brown.

6 MR. BROWN: Your Honor, might I suggest that
7 at least later some ruling might be given by the Tribunal
8 as to whether parts of these documents not read in evidence
9 may be referred to in summation.

10 THE PRESIDENT: I know that some parts of docu-
11 ments not read, and which apparently were not thought
12 important at the time, are regarded by at least some Members
13 as very important now in the light of what has happened
14 since. This question arose at Nuernberg, and I think the
15 Court changed its view about the matter at least once. It
16 is by no means simple.

17 Use your judgment, Mr. Yamaoka, and I am sure you
18 will read only things which you think the Court should
19 know. Now we have to deal with the contention of whether
20 the whole of the document should be rejected. It seems to
21 be repetitive.

22 MR. YAMAOKA: If the Tribunal please, I don't be-
23 lieve that this third paragraph, for instance, is repeti-
24 tive. The last clause of that last sentence of that para-
25 graph --

1 THE PRESIDENT: By a majority the Court sus-
2 tains the objection and rejects the document.
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1 MR. YAMAOKA: We offer in evidence defense
2 document 2153. This is an answer of Foreign Minister
3 HIROTA to a question in the House of Representatives
4 at the 67th Session of the Imperial Diet, on
5 February 21, 1935.

6 I only intend to read from the sentence
7 beginning at the latter part of the page, "I think,"
8 to the end.

9 THE PRESIDENT: Mr. Brown.

10 MR. BROWN: Your Honor, the prosecution
11 objects to this document as repetitive, and also on
12 the ground that the part which my learned friend
13 proposes to read is entirely opinion.

14 THE PRESIDENT: There was less than a month
15 between the speech just rejected and this, and they
16 all have the same tenure, to say the least.

17 MR. YAMAOKA: If the Tribunal please, I do
18 not believe that Mr. HIROTA in his prior speeches
19 mentions the points that I intend to read here, and
20 as for opinion, why, this is the statement of the
21 accused himself, given in answer to an interpellation
22 in the Diet.

23 Our purpose in introducing documents of this
24 type, which your Honors have no doubt noticed on the
25 order of proof, is to show the consistency of Mr.

1 HIROTA's position throughout his official career.

2 THE PRESIDENT: A speech a year would be
3 enough for that purpose. We do not need speeches
4 every three weeks.

5 MR. YAMAOKA: But if your Honors please, I
6 do not believe that that sentence that begins with
7 "I think" has been covered.

8 THE PRESIDENT: By a majority, the Tribunal
9 overrules the objection and admits the document to
10 the extent of one sentence, which I will read.

11 CLERK OF THE COURT: Defense document 2153
12 will receive exhibit number 3249.

13 (Whereupon, the document above
14 referred to was marked defense exhibit No.
15 3249 and received in evidence.)

16 THE PRESIDENT: The sentence is, "I think
17 there are still Japanese in various fields who have
18 some suspicions of Chinese moves, but for myself, I
19 have not the slightest suspicion of Chiang Kai-shek's
20 attitude."

21 MR. YAMAOKA: If the Tribunal please, we
22 next offer in evidence defense document 2164. This
23 is a statement of Mr. HIROTA before the Committee of
24 the Budget of the House of Peers at a session of the
25 Imperial Diet on February 25, 1935.

1 THE PRESIDENT: Mr. Brown.

2 MR. BROWN: Your Honor, the prosecution ob-
3 jects to this document as repetitive, and consisting
4 of mere vague generalities.

5 You stated, your Honor, that the Tribunal
6 did not need speeches every three weeks. I would
7 draw attention that this is much less than three
8 weeks. It is four days later.

9 THE PRESIDENT: Yes, the objection is sus-
10 tained and the document rejected by a majority.

11 MR. YAMAOKA: If the Tribunal please, may I
12 respectfully suggest that this question of the Four-
13 Power Pact has not been discussed before in any of
14 his prior speeches?

15 THE PRESIDENT: Well, that is the decision
16 of the majority.

17 MR. YAMAOKA: I may, if the Tribunal will
18 permit, point out also that while it is true that
19 some of the Washington treaties were abrogated by
20 Japan, this Four-Power treaty was not abrogated by
21 Japan.

22 THE PRESIDENT: Yes, Mr. Yamaoka?

23 MR. YAMAOKA: And this has a bearing upon
24 the course of action Japan took subsequently in fail-
25 ing to attend the Brussels Conference, which --

1 THE PRESIDENT: Now, here is a pregnant
2 observation, if I may say so, by one of my colleagues:

3 If the accused HIROTA wishes to prove that he
4 made public statements declaring peaceful purposes,
5 then he has done so abundantly.

6 MR. YAMAOKA: I may state, if your Honors
7 please, that these are not the only speeches made by
8 Mr. HIROTA, nor the answers of Mr. HIROTA to inter-
9 pellations in the Diet. He has had, oh, many, many
10 more, out of which --

11 THE PRESIDENT: Proceed with the next docu-
12 ment, Mr. Yamaoka.

13 MR. YAMAOKA: We offer in evidence defense
14 document 2154. This is the answer of Foreign Minister
15 HIROTA in the House of Representatives at the 67th
16 Session of the Imperial Diet, dated March 1, 1935.

17 We intend to read only the last sentence of
18 paragraph 2 of this document.

19 THE PRESIDENT: Mr. Brown.

20 MR. BROWN: Your Honor, the prosecution ob-
21 jects to this document as being repetitive and con-
22 sisting of mere vague generalities.

23 MR. YAMAOKA: If the Tribunal please, I do not
24 believe this statement has previously been included in
25 prior documents of Mr. HIROTA. We further deem

1 this statement to be very material, owing to the fact
2 that the prosecution has charged, particularly in
3 Appendix A of the Indictment, that Japan tried to ob-
4 tai special privileges in China and to obtain
5 economic domination over China.

6 THE PRESIDENT: The objection is overruled
7 and the document admitted to the extent of that one
8 sentence.

9 CLERK OF THE COURT: Defense document 2154
10 will receive exhibit No. 3250.

11 (Whereupon, the document above
12 referred to was marked defense exhibit No.
13 3250 and received in evidence.)
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1 MR. YAMAOKA: I shall read defense exhibit
2 3250 to the extent admitted:

3 "MINUTES OF THE PROCEEDINGS OF THE COMMITTEE
4 OF THE HOUSE OF REPRESENTATIVES REGARDING CLOSING AC-
5 COUNTS AT THE 67TH SESSION OF THE IMPERIAL DIET. 1
6 MARCH 1935.

7 "Answer of the Minister of State.

8 "Minister of State HIROTA.

9 "Moreover, as it would be difficult in present
10 conditions in China to promise special privileges to
11 Japan, I suggested that China should treat Japan in
12 the same manner as other countries, i.e., to take an
13 impartial attitude and extend the same privileges to
14 Japan as extended to other nations."

15 We offer in evidence defense document 2149.
16 This consists of telegraphic messages exchanged between
17 Foreign Minister HIROTA and Soviet Peoples Commissar
18 for Foreign Affairs --

19 THE PRESIDENT: 1429, is it?

20 MR. YAMAOKA: Oh, I am sorry, yes: 1429.

21 In celebration of the signing of the agreement concern-
22 ing the Chinese Eastern Railway.

23 THE PRESIDENT: Admitted on the usual terms.

24 CLERK OF THE COURT: Defense document 1429
25 will receive exhibit No. 3251.

(Whereupon, the document above
referred to was marked defense exhibit
No. 3251 and received in evidence.)

1 MR. YAMAOKO: I shall read exhibit 3251:

2 "The telegraphic messages exchanged between
3 Japanese Foreign Minister HIROTA and Soviet People's
4 Commissar for Foreign Affairs Litvinov in celebration
5 of the signing of the agreement concerning the North
6 Manchurian Railway.

7 "(1) From Litvinov to HIROTA.

8 "(Received on March 24, 1935)

9 "His Excellency K. HIROTA, Minister for
10 Foreign Affairs, Tokyo.

11 "I learned with much satisfaction of the
12 signi. of the agreement concerning C. E. R. Con-
13 sider it my pleasant duty to convey to you my sincere
14 congratulation on the successful completion of the
15 negotiations in which you personally took so active
16 and fruitful a part. I feel sure that we will con-
17 tinue our further fruitful cooperation for the limi-
18 tation of any cause for conflicts and misunderstand-
19 ings between our countries and for the strengthening
20 of really friendly relations between them in the
21 interest of our nations and of general peace.

22 "Litvinov,

23 "People's Commissar
24 for Foreign Affairs.
25

"Moscow, March 23rd."

1 "(II) From HIROTA to Litvinov.

2 "(Despatched on March 25, 1935)

3 "His Excellency Monsieur M. Litvinov,

4 "People's Commissar for Foreign Affairs,

5 Moscow.

6 "Sincere thanks for your telegram. I reci-
7 procate the feeling of satisfaction for the success-
8 ful completion of the negotiations concerning the
9 North Manchurian Railway and I take this opportunity
10 to express my deep appreciation for your steadfast
11 and untiring efforts which contributed so much to the
12 success of the negotiations. The agreement will pro-
13 mote cordial relations between the USSR and Manchukuo,
14 and a foundation has been laid by this agreement for
15 further development of friendly relations between Japan,
16 the USSR and Manchukuo. I firmly believe that the same
17 spirit of conciliation and cooperation as demonstrated
18 in the present negotiations will insure amicable set-
19 tlement of other pending questions, thereby further
20 strengthening the basis of peace in East Asia.

21 "K. HIROTA, Minister for
22 Foreign Affairs.
23

24 "Tokyo, March 25."

25 There is a certificate attached, which I
shall not read.

1 We offer in evidence defense document 2505.
2 This is a statement taken from Litvinov's 'Foreign
3 Policy of the Soviet Union,' published by the State
4 Publication Institute, Moscow, 1937, which shows a
5 statement issued to Japanese correspondents on the
6 significance to Soviet-Japanese relations on the occa-
7 sion of the signing of the agreement for the sale of
8 the Chinese Eastern Railway on March 14, 1935.

9 THE PRESIDENT: Mr. Brown.

10 MR. BROWN: Your Honor, the prosecution
11 objects to this document as irrelevant. It is sug-
12 gested that it is merely the sort of polite statement
13 which it is customary to make when any international
14 agreement is reached and that it proves nothing.

15 THE PRESIDENT: We have no reason to think
16 that diplomats are polite at the expense of truth.
17 The objection is overruled and the document admitted.

18 CLERK OF THE COURT: Defense document 2505
19 will receive exhibit No. 3252.

20 (Whereupon, the document above
21 referred to was marked defense exhibit
22 No. 3252 and received in evidence.)

23 MR. YAMAOKA: I shall read exhibit 3252:
24 "Statement to Japanese Correspondents on
25 the Meaning to Soviet-Japanese Relations of the

1 Initialling of the Agreement on the Chinese Eastern
2 Railway on March 14, 1935.

3 "(Taken from Mr. Litvinov's 'Foreign Policy
4 of the Soviet Union', published by the State Publish-
5 ing Institute, Moscow, 1937.)

6 "You ask me to make a remark of evaluation
7 of the initialling of the Agreement on the Chinese
8 Eastern Railway which has just taken place, and to
9 express my opinion on the possible influence of this
10 event on the fate on other problems which interest
11 Japan, for instance, the Fishery Convention and de-
12 militarization of border zones.

13 "It seems to me that there cannot be differ-
14 ent opinions on the point that the Agreement on the
15 Chinese Eastern Railway must be regarded as a solution
16 of one of the most complicated Far Eastern problems,
17 and at the same time as the greatest positive event
18 in the development of Soviet-Japanese relations.

19 "The Soviet Government testified over ten
20 years ago to its readiness to dispose of the Chinese
21 Eastern Railway, entitling China by the Peking Treaty,
22 1924, to purchase the Railway before the time-limit,
23 and beginning concrete negotiations on cession of the
24 Railway to the former de facto regime of Manchuria,
25 but the Soviet Government was unable to come to the

conviction, under the changes since 1931, that the Chinese Eastern Railway cannot but become an inevitable source of conflicts between the Soviet Union and Japan, and disturb its policy of maintaining peace with all its neighbors. It did not take time for facts to show the correctness of this supposition, and as a matter of fact, from the first months of the appearance of a new regime in Manchuria there began a series of conflicts between this regime and the Soviet section of the Railway Administration, the conflicts which, in spite of all our love of peace, threatened to bring serious consequences to all sides concerned. That is why I declared on May 2, 1933, to Mr. OTA, the Japanese Ambassador in Moscow, in the name of my Government, our readiness to begin negotiations without delay on the sale of the Chinese Eastern Railway to Manchukuo. It seems to me that this proposal was one of the clearest manifestations of the Soviet Government's love of peace, and has been received as such by the whole world, not excluding Japan.

"Looking upon the sale of the Chinese Eastern Railway as one of the sources for strengthening peace in the Far East, the Soviet Government has shown in the commenced negotiations utmost good will and concession, departing, after all, a considerable degree

1 from the position it at first took. On the other
2 hand, tribute must be paid to the Japanese Manchu-
3 kuoan side, which gradually has come to meet our
4 concession.

5 "The negotiations continued about two years,
6 which shows the great difficulties we have had, and
7 we have to attribute their conquest to the efforts
8 on both sides to negotiate and attain the results
9 already noted. In overcoming these difficulties,
10 Mr. HIROTA, Japanese Minister for Foreign Affairs,
11 who has taken active part in all the stages of the
12 negotiations, has rendered no small service. Mr.
13 HIROTA's residence in the Soviet Union in the capacity
14 of Ambassador has no doubt helped establish mutual
15 understanding between Soviet and Japanese partici-
16 pants in the negotiations.

17 There is a certificate attached, if your
18 Honor please, which I shall not read.
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1 We offer in evidence defense document
2 206-B (34), an excerpt from Ambassador Grew's Diary,
3 "Ten Years in Japan," to show that in July 1935 Mr.
4 HIROTA was consistent in his efforts to promote good
5 relations between the United States and Japan.

6 THE PRESIDENT: Mr. Brown.

7 MR. BROWN: Your Honor, the prosecution
8 objects to this document. The first paragraph, in
9 our submission, is irrelevant. The second and almost
10 the whole of the third paragraph contains merely a
11 statement of HIROTA's stated good intentions. And
12 the last sentence but one of the whole document merely
13 contains Ambassador Grew's opinion of Mr. HIROTA.

14 MR. YAMAOKA: If the Tribunal please, this
15 is a record of Mr. Grew's conversation with Mr. HIROTA
16 on July 18, 1935 and shows the consistency of his
17 position from the time he assumed the Foreign Minister-
18 ship about which an excerpt has already been admitted
19 in evidence. This statement is dated July 18, 1935
20 and shows the consistency throughout. It seems to
21 me, if I may respectfully submit, the actual report of
22 a conversation is clearly admissible.

23 THE PRESIDENT: By a majority, the objection
24 is sustained and the document rejected.

25 MR. YAMAOKA: We offer in evidence defense

1 document 2216. This is a telegram from Foreign Min-
2 ister HIROTA to the Japanese Ambassador to China and
3 others in China, dated August 5, 1935, with regard to
4 the policy towards China.

5 THE PRESIDENT: Admitted on the usual terms.

6 CLERK OF THE COURT: Defense document 2216
7 will receive exhibit No. 3253.

8 (Whereupon, the document above
9 referred to was marked defense exhibit
10 No. 3253 and received in evidence.)

11 MR. YAMAOKA: I shall read exhibit 3253:

12 "Telegram sent by Mr. HIROTA, Minister for
13 Foreign Affairs, on August 5th, 1935, and addressed to
14 Japanese Ambassador to China, Japanese Charge d'Aff-
15 aires at Peiping, Japanese Consuls-General at Tient-
16 sin and Nanking.

17 "Code telegram Go No. 556 (Confidential).

18 "With regard to the Policy towards China.

19 "In view of the recent change of the situa-
20 tion I directed the Bureau concerned since some time
21 past to conduct, in strict secrecy and together with
22 the Army and the Navy authorities, a fundamental re-
23 investigation with regard to our policy towards China.
24 I instructed to present without delay a tentative plan
25 made by the Bureau of the East Asiatic Affairs (dated

1 July 2nd) which I am forwarding to you by my separate
2 telegram Go No. 555. On the part of the Army and the
3 Navy there seems to be no objection substantially to
4 the purport of the plan and it is expected that it
5 will be decided upon in the near future. You shall
6 be informed as soon as a decision is arrived at. In
7 the meanwhile you are requested to keep the matter
8 strictly confidential and for your personal informa-
9 tion. The present telegram, together with the separ-
10 ate telegram, are addressed to --- (the rest is omitted).

11 "Separate telegram in Code Go No. 555
12 (Confidential).

13 "It is the essential point of our foreign
14 policy to secure stabilization in East Asia by means
15 of cooperation and mutual assistance of Japan, Man-
16 chukuo and China and it is most important that the
17 three countries should, with this end in view, enter
18 into friendly relations and make necessary cooperation.
19 Herein lies the foundation of our policy towards China.
20 Therefore we are resolved to attain the above object
21 in accordance with the following general principles
22 and in a way best suited to circumstances.

23 "(1) China should carry out strict control
24 over all anti-Japanese speeches and activities. At
25 the same time Japan and China, based upon their special

responsibility with regard to the securing of peace in East Asia, should make efforts to establish and promote the relations of friendship and cooperation on the basis of the principles of mutual respect of independence and cooperation and mutual assistance (such efforts to establish and promote the relations of friendship and cooperation are to be started from the economic and cultural directions), and, making a step further, the two countries should work for the development of the relations between Manchukuo and China.

"(2) Such development of the relations between Manchukuo and China makes it its ultimate aim that China will give formal recognition to Manchukuo and that, parallel to this, Japan, Manchukuo and China will conclude a necessary agreement to regulate the new relations between the three countries in accordance with the principles of mutual respect of independence and of cooperation and mutual assistance. However, for the time being, China is to agree not to deny the fact of Manchukuo's existence at least in North China and the Chahar district which border on the Manchukuo territory and to stop anti-Manchukuo policy, and, going a step further, to enter into actual relations of interdependence and cooperation in

1 the economic and cultural fields with Manchukuo.

2 "(3) In view of the fact that the Bolshevik
3 menace coming from Outer Mongolia and others in a com-
4 mon menace to Japan, "anchukuo and China, cooperation
5 at least between Japan and China should be worked out
6 in Chahar and other districts bordering on Outer Mon-
7 golia with a view to removing such menace."

8 We offer in evidence defense document 2217,
9 being a telegram from Mr. HIROTA, as Minister for
10 Foreign Affairs, on September 28, 1935, addressed to
11 the Japanese embassies in China, "anchukuo, etc. This
12 document shows the text of Japanese policy toward
13 China which was decided upon by the Japanese Govern-
14 ment on October 4, 1935 and became popularly known by
15 the name of "HIROTA's Three Principles" towards China.

16 THE PRESIDENT: Mr. Brown.

17 MR. BROWN: Your Honor, the prosecution ob-
18 jects to this document as being merely repetitive of
19 the last document read, exhibit 3253.

20 MR. YAMAOKA: If the Tribunal please, in
21 reply, I desire to point out that the previous exhibit,
22 3253, was a tentative plan suggested by the Foreign
23 Office. That plan was ultimately changed to the one
24 contained in this document by the decision of the
25 Foreign Office, Army, Navy, Finance Minister and the

1 Premier. This would be revealed when the next docu-
2 ment on the order of proof is introduced.

3 THE PRESIDENT: By a majority the objection
4 is overruled and the document admitted on the usual
5 terms.

6 CLERK OF THE COURT: Defense document 2217
7 will receive exhibit No. 3254.

8 (Whereupon, the document above
9 referred to was marked defense exhibit
10 3254 and received in evidence.)

11 MR. YAMAOKA: I shall read exhibit 3254:

12 "Telegram sent by Mr. HIROTA, Minister for
13 Foreign Affairs, on September 28th, 1935, and addressed
14 to Japanese Ambassadors in China and in Manchukuo,
15 Japanese Charge d'Affaires at Peiping, Japanese Consuls-
16 General at Tientsin, Tsinan, Tsingtao, Nanking, Hankow,
17 Foochow, Amoy and Canton.

18 "Code telegram Go No. 687 (Confidential)

19 "With regard to the policy towards China.

20 "The future policy towards China has been a
21 matter of consideration for some time with the cooper-
22 ation of the Army and the Navy. As a result of such
23 consideration a draft policy such as I am forwarding to
24 you by my separate telegram Go No. 688 has been made by
25 the Departmental authorities of the Departments of

1 Foreign Affairs, War and the Navy, and steps are being
2 taken at present to have it decided as a matter under-
3 stood by the Ministers of the Departments concerned.
4 You will be further informed as soon as such decision
5 is made. You are requested to keep the matter strictly
6 for your confidential information. You are authorized,
7 however, to give a copy of the present and separate
8 telegrams to the representatives of the Army and the
9 Navy upon their requests.

10 "The present and the separate telegrams
11 are addressed to - - - - (the rest is omitted).

12 "Separate telegram in Code Go No. 688
13 (Confidential).

14 "It is the fundamental basis of our foreign
15 policy to secure stabilization in East Asia and to
16 work for the common prosperity by means of coopera-
17 tion and mutual assistance by Japan, Manchukuo and
18 China, putting Japan as its center. Herein lies the
19 aim of our policy towards China. To accomplish this
20 aim it is essential first of all to invite China (the
21 central as well as local governments), in accordance
22 with the following principles and always upholding
23 the great cause of justice and in a way best suited
24 to circumstances, to regulate their relations with
25 Japan and Manchukuo and thereby to bring about a sit-

1 uation capable of establishing the fundamental relations
2 between Japan, Manchukuo and China.

3 "(1) China should carry out strict control
4 over all anti-Japanese speeches and activities, and,
5 putting an end to her policy of depending upon European
6 and American countries, she should adopt a friendly
7 policy towards Japan and actually carry out such policy.
8 Further, she should cooperate with Japan on concrete
9 questions.

10 "(2) Although it is essential that China should
11 ultimately give a formal recognition of Manchukuo, but
12 for the time being, China should actually give tacit
13 consent to the independence of Manchukuo and cease her
14 anti-Manchukuo policy. Furthermore, China should, at
15 least in North China, which is a district bordering
16 on the Manchukuo territory, enter into relations of
17 interdependence and cooperation in the economic and cul-
18 tural fields with Manchukuo.

19 "(3) In view of the fact that the menace of
20 Bolshevik influence coming from Outer Mongolia and
21 others constitutes a common menace to Japan, Manchukuo
22 and China, China should cooperate in taking various
23 measures which Japan desires in the districts bordering
24 on Outer Mongolia in order to remove such menace.
25

 "In the event that the points set forth in the

1 above-mentioned principles are carried into execution
2 steadily and Japan feels convinced of the sincerity
3 of China with regard to her friendship and cooperation
4 with Japan and Manchukuo, a general agreement to es-
5 tablish the relations of friendship and cooperation
6 between Japan and China shall firstly be concluded and
7 then an agreement necessary for the regulation of the
8 new relations between Japan, Manchukuo and China shall
9 be concluded."

10 There is a certificate attached, which I
11 shall not read.
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1 We offer in evidence defense document 2218.
2 This is a telegram from Mr. HIROTA, as Minister for
3 Foreign Affairs, dated October 4, 1935, and addressed
4 to Japanese embassies in China, Manchukuo and other
5 officials, with regard to the policy towards China.
6 This document shows that the policy involved in the
7 three principles toward China was decided upon by
8 agreement of the Foreign Office, Army, Navy, Finance
9 Minister and Premier OKADA.

10 THE PRESIDENT: Mr. Brown.

11 MR. BROWN: Your Honor, the prosecution
12 objects to this document as being merely repetitive
13 of information contained in the exhibit just read.

14 MR. YAMAOKA: If the Tribunal please, in
15 the previous exhibit, Code Telegram Go No. 687 it is
16 stated that **steps** are being taken at present to have
17 it decided as a matter understood by the ministers of
18 the departments concerned. Now, this --

19 THE PRESIDENT: By a majority the objection
20 is overruled and the document admitted on the usual
21 terms.

22 CLERK OF THE COURT: Defense document 2218
23 will receive exhibit No. 3255.

24 (Whereupon, the document above
25 referred to was marked defense exhibit

1 No. 3255 and received in evidence.)

2 MR. YAMAOKA: (Reading)

3 "Telegram sent by Mr. HIROTA, Minister for
4 Foreign Affairs, on October 4th, 1935, and Addressed
5 to Japanese Ambassadors in China and in Manchukuo,
6 Japanese Charge d'Affaires at Peiping, Japanese Con-
7 suls-General at Tientsin, Tsinan, Tsingtao, Nanking,
8 Hankow, Foochow, Amoy and Canton.

9 "Code telegram Go No. 716 (Confidential)

10 "With regard to the policy towards China.

11 "Referring to my telegram Go No. 687, the mat-
12 ter was decided upon on October 4th exactly as was in-
13 formed to you by my telegram Go No. 688 and as a mat-
14 ter understood by the Minister for Foreign Affairs,
15 the Minister of War and the Minister of the Navy. The
16 Prime Minister and the Finance Minister also acknow-
17 ledged it. In this connection you are requested to
18 keep specifically close connection with this Depart-
19 ment with regard to the application of the principles
20 (we are not expecting, however, for the time being, any
21 active application of them in the posts other than the
22 Ambassador to China, and at Nanking, Peiping and Tient-
23 sin. Accordingly, at Embassy and Consulates-General
24 other than these four it is requested to keep the
25 matter for the present strictly as personal information).

1 You should also maintain contact with the representa-
2 tives of the Army and the Navy. The present telegram
3 is addressed to those who were informed by my tele-
4 gram Go No. 687 (the rest is omitted)."

5 No. 40, if the Tribunal please, on the order
6 of proof, defense document 2023, will be withdrawn.
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1 We offer in evidence defense document
2 2221 which is a telegram from Consul-General SUMA
3 at Nanking to Foreign Minister HIROTA dated November
4 14, 1935.

5 THE PRESIDENT: Mr. Brown.

6 MR. BROWN: Your Honor, the prosecution
7 objects to this document as containing merely opinion--
8 merely the opinion of the Consul-General, the Japanese
9 Consul-General, at Nanking of the situation as he saw
10 it and sent to the then Foreign Minister HIROTA. In
11 our submission this is irrelevant to the case of the
12 accused HIROTA.

13 MR. YAMAOKA: If the Tribunal please, this
14 telegram reports the changed attitude of China toward
15 the ru rochement which was in the making as of that
16 time, and it discloses that one of the principal
17 parties to the discussions and negotiations was
18 almost assassinated. We feel that this evidence will
19 reveal that the failure to have the three principles
20 of Mr. HIROTA carried out in full was not the fault
21 alone of the Japanese.
22

23 THE PRESIDENT: By a majority the objection
24 is overruled and the document admitted on the usual
25 terms.

CLERK OF THE COURT: Defense document 2221

1 will receive exhibit No. 3256.

2 (Whereupon, the document above
3 referred to was marked defense exhibit
4 No. 3256 and received in evidence.)

5 MR. YAMAOKA: I shall read exhibit 3256:

6 "Nanking telegram dated November 14, 1935,
7 arriving at the Japanese Foreign Office on November
8 15.

9 "Addressed to Foreign Minister FIROTA
10 from Consul-General SUMA at Nanking.

11 "Cipher tel. No. 1257. (Confidential)

12 "The opinions towards Japan within the Nation-
13 alist Government have grown hostile suddenly, as my
14 successive telegrams informed you. Communists and
15 other lawless elements are suspected to be at work
16 behind this sudden change.

17 "As to the attempted assassination of Wang
18 Ching-wei and other various accidents, it is considered
19 necessary, in dealing with them, not to regard them
20 as mere contingents. And if there occurs some more
21 serious event or other in North China besides, there
22 would be no small danger that the pro-Russians, the
23 desperate war advocates, the pro-Europeans and the pro-
24 Americans among the Chinese people might be driven to
25 desperation.

1 "According to my observation during the
2 recent travel through North China, however, there are
3 signs that some undesirable events may take place
4 against the three fundamental points decided at the
5 Cabinet council the other day. Unfortunately, there
6 are fears, again, that the British assistance to
7 China in response to the new monetary system plan,
8 which was suddenly announced, may urge such unfavor-
9 able turn of situation. (I am secretly informed of
10 the fact that our mechanized troops are being con-
11 centrated at Shanhaikwan for these several days.)
12 Grave events might be caused, if wrong measures are
13 taken. It is therefore desired that proper steps
14 should be taken so that our authorities in North
15 China may act strictly in conformity with the deci-
16 sion of the Cabinet council. I submit my opinion to
17 you, though you may be well aware of the point, in
18 consideration of the recent situation of the National-
19 ist Government.
20

21 "(Transmitted to the Embassy at Nanking and
22 the Consulate-General at Tientsin.)"

23 We offer in evidence defense document 979.
24 These two telegrams from Consul-General SUMA to
25 Foreign Minister HIROTA report a conversation between
Japanese Ambassador to China, ARIYOSHI, and Chiang

1 Kai-shek with respect to the problem of working
2 out an over-all adjustment of relations on the basis
3 of the three principles proposed by Foreign Minister
4 HIROTA.

5 THE PRESIDENT: Admitted on the usual terms.

6 CLERK OF THE COURT: Defense document 979
7 will receive exhibit No. 3257.

8 (Whereupon, the document above
9 referred to was marked defense exhibit
10 No. 3257 and received in evidence.)

11 MR. YAMAOKA: I shall read exhibit 3257:

12 "Telegram dispatched from Nanking, P.M.
13 November 21, 1935; arrived at this office, P.M. the
14 same date, from Consul-General SUMA to Foreign Minister
15 HIROTA, No. 1291-1 (Confidential).

16 "From Ambassador ARIYOSHI.

17
18 "1. Pursuant to the conference previously
19 reported by telegram No. 1290, I asked Chiang, 'What
20 is your opinion on the three principles on improving
21 diplomatic relations recently proposed by Foreign
22 Minister HIROTA?' He quite frankly replied that he
23 completely agreed on the three principles, and had no
24 'counterproposals' to make (Tang later explained that
25 this 'counterproposals' meant conditions); he was
determined to learn Japan's desire immediately, to

1 discuss the matter concretely, and to carry it out
2 promptly; and he desired that due consideration be
3 given by Japan on the present situation in North
4 China, because if something should happen in North
5 China, discussions on this question will be impossible.

6 "2. Therefore I asked Chiang, 'According
7 to your opinion, you intend to decide whether you want
8 to carry out the three principles or not on condition
9 that the situation in North China be settled peace-
10 fully?' He replied, 'I do not mean to make it a
11 condition, but to begin with the three principles pro-
12 posed at this time by Japan are closely connected
13 with North China, and accordingly it will naturally
14 be impossible to carry out Articles II and III of the
15 three principles if an incident should break out
16 in North China.' (To be continued)"

17 This is a continuation; I shall not read the
18 title:

19 "3. I told him that I was also worried about
20 this point, which was the reason I drew his attention
21 to this North China problem first of all that day,
22 and requested him to take proper measures. Moreover,
23 I told him that I would consult him in the future as
24 to the way of carrying out the three principles. Then,
25 in connection with this, referring to the enforcement

1 of the silver nationalization law, the theory of a
2 loan, and the problem of Japan-China air communica-
3 tion, I had a conversation with him as reported in
4 the separate telegrams. I also requested him to
5 take measures to check the anti-Japanese atmosphere
6 at various places which resulted from the recent
7 Sailor Incident and the Incident in which Japanese
8 stores were attacked at Shanghai. In addition I said
9 that if the said three principles be enforced immed-
10 iately, suspicion on the part of Japan will be cleared,
11 and it would be effective in promoting our diplomatic
12 relationship.

13 "4. Then Chiang replied that there will
14 never be anti-Japanese movements, and that he was by
15 no means anti-Japanese and was sincerely hoping for
16 friendly relations between Japan and China. He told
17 me to feel at ease because the Chinese who loves China
18 would never start an anti-Japanese movement.

19 "I am transmitting this telegram to Peiping
20 and Tientsin, China."

21 There is a certificate, if your Honor please,
22 which I shall not read.
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1 MR. YAMAOKA: We now offer for identification
2 the book entitled "International Situation in 1935",
3 published by the Japan International Association on
4 June 14, 1936, and offer in evidence defense document
5 2270, being an excerpt therefrom. This excerpt shows
6 the official announcement to the Chinese Foreign
7 Department at the time ambassadors were exchanged
8 between Japan and China, in 1935. Prior to this the
9 two countries merely maintained legations and ministers.

10 THE PRESIDENT: Mr. Brown.

11 MR. BROWN: Your Honor, the prosecution objects
12 to this document. It is a statement taken from a book
13 which appears to have no official authority. It quotes
14 a statement in the first sentence that it is a matter
15 of congratulation that the governments of Japan and
16 China should have raised their legations to the status
17 of embassies. It goes on to state the appreciation
18 of the Chinese Government of this measure, and the
19 second paragraph contains, apparently, the writer's
20 views on Mr. ARIYOSHI. It is suggested that all of
21 this lacks probative value and it is irrelevant to the
22 case of the accused HIROTA.

23 THE PRESIDENT: By a majority, the objection
24 is sustained and the document rejected.

25 MR. YAMAOKA: If the Tribunal please, I wish

1 to announce that No. 44 on our order of proof, defense
2 document 1846, will be withdrawn.

3 Exhibit 2434 in evidence is referred to and
4 counsel propose to read parts of the document not here-
5 tofore read in evidence. The document contains an
6 important statement by Mr. HIKOTA before the House of
7 Representatives at the 68th session of the Diet on
8 January 22, 1936 with respect to the foreign relations
9 of Japan. The part heretofore read into the record
10 begins with the second paragraph and the words "It
11 gives us a great delight", and ended with the words
12 in the second paragraph "till they are perfectly
13 normalized", which is on the second page. I intend to
14 read excerpts from pages 7, 9, 10 and 11.

15 THE PRESIDENT: Read that after the recess,
16 Mr. Yamaoka. We will recess now for fifteen minutes.

17 (Whereupon, at 1045 a recess was
18 taken until 1100, after which the proceedings
19 were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Yamaoka.

4 MR. YAMAOKA: If the Tribunal please, I
5 intend to read the second paragraph on page 7 of the
6 English copy of this exhibit 2434; and on page 9 of
7 the English copy of this exhibit, toward the bottom
8 of the page, the sentence beginning with "To
9 Australia . . ." and continuing to the end of the
10 sentence; that is, the first two lines of page 10 and
11 the second sentence of the first paragraph of page 11.

12 I shall now read the excerpt on page 7 of
13 this exhibit:

14 "The establishment of a Joint Committee is
15 now talked about, the Manchurian Government insists,
16 first of all, on the necessity of clarifying the
17 ambiguous border line. The one point we are deeply
18 concerned about in the relations of the three coun-
19 tries is the excessive military preparations on the
20 part of Soviet Russia in her far outlying colony of
21 East Siberia. As this is directly inciting the feeling
22 of not only the Manchurians but also of our people,
23 we are taking every opportunity to demand sincere
24 consideration on this point on the part of Soviet
25 authorities."

1 Turning to page 9:

2 "To Australia we sent Ambassador DEBUCHI
3 to reciprocate the friendly mission of Mr. Latham,
4 the Foreign Minister of Australia, and also we
5 made him pay a visit to New Zealand to promote
6 friendship with that Commonwealth. As for the South
7 Sea Islands, our Empire looks forward to promoting
8 amicable relations expecting the development of our
9 commercial intercourse with them. From this point
10 of view we heartily hanker after satisfactory
11 development of the Philippine Commonwealth which
12 has lately been founded."

13 And skipping to page 11:

14 "Last year we were unfortunately obliged
15 to apply the Protective Trade Law on Canadian
16 merchandise, but afterwards a perfect compromise
17 was reached between our country and Canada, our
18 true intention being thoroughly understood by
19 Canada, and to our heartfelt congratulation, we
20 have ceased to apply the law any longer."

21 We now offer in evidence another excerpt
22 from the diary of Ambassador Grew, "Ten Years in
23 Japan," being defense document 206C(1), which dis-
24 closes the problems confronting Mr. HIROTA when he
25 was ordered by the Emperor to form a cabinet

1 immediately after the February 26, 1936 Incident.
2 The document reports the conversation between Am-
3 bassador Grew and Prime Minister HIROTA immediately
4 after the formation of the new cabinet. We intend
5 to read only from the entry dated March 5, 1936 on
6 page 9.

7 THE PRESIDENT: Mr. Brown.

8 MR. BROWN: Your Honor, the prosecution
9 objects to this document. The first eight pages,
10 which my learned friend does not propose to read
11 but which may be regarded as part of the evidence,
12 in our submission are completely irrelevant to the
13 case of HIROTA. It is headed "The Lightning
14 Strikes," but there appears to be nothing short
15 and sharp about it. It is a long account of the
16 February 26, 1936 Incident. As regards the para-
17 graph which it is proposed to read, headed "HIROTA
18 REORGANIZES," on page 9, March 5, 1936, the prosecu-
19 tion wishes to point out that this merely contains
20 Ambassador Grew's opinion of HIROTA and of surround-
21 ing events. On page 11, the paragraph beginning
22 "With regard to China . . ." contains a repetition
23 of HIROTA's three points as regards China. The
24 last paragraph of that same page 11 is, in our
25 submission, irrelevant. It merely gives an account

1 by Ambassador Grew of what he, Ambassador Grew,
2 said to HIROTA.

3 MR. YAMAOKA: May it please the Tribunal,
4 we are perfectly willing to delete from this document
5 the first eight pages to the entry dated March 5,
6 1936.

7 THE PRESIDENT: You ask us to admit only
8 what you propose to read?

9 MR. YAMAOKA: Yes, your Honor.

10 THE PRESIDENT: That is the entry under
11 March 5, 1936?

12 MR. YAMAOKA: Yes, your Honor. And may
13 I state further, that also in the entry of March 5,
14 1936 there are statements of fact contained in this
15 entry, and in so far as the objection to page 11 is
16 concerned we are introducing this document to show
17 that Mr. HIROTA not only propounded these principles
18 to the various embassies and consulates in China and
19 other parts of the world as shown by the previous
20 exhibits, but that he also reiterated the same thing
21 to Ambassador Grew.

22 THE PRESIDENT: By a majority the objection
23 is sustained and the document rejected.

24 MR. YAMAOKA: If the Tribunal please,
25 Mr. HANAI will continue with the case.

1 THE PRESIDENT: Counselor HANAI.

2 MR. HANAI: I ask that the witness,
3 TSUGITA, Daisaburo, be called.

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1 D A I S A B U R O T S U G I T A, called as a witness
2 on behalf of the defense, being first duly sworn,
3 testified through Japanese interpreters as
4 follows:

5 MR. HANAI: May the witness be shown defense
6 document 2603.

7 DIRECT EXAMINATION

8 BY MR. HANAI:

9 Q Is that your affidavit, bearing your signature?

10 A Yes, it is. But I should like to correct one
11 typographical error on a Japanese page. There is a
12 correction to be made in the Japanese text. This has
13 nothing to do with the English version.

14 Q Except this correction, are the contents
15 thereof true and correct?

16 A Yes, they are.

17 MR. HANAI: I now tender defense document
18 2603 in evidence.

19 THE PRESIDENT: Mr. Comyns Carr.

20 MR. COMYNS CARR: May it please the Tribunal,
21 the first part of this affidavit is entirely general
22 and has nothing to do with the case of HIROTA -- the
23 first paragraph. There was a previous affidavit of
24 this witness which was tendered and admitted in the
25 general phase, where it belonged. It was a somewhat

1 argumentative document relating to the question of
2 the effect of the change in regulation in the time of
3 HIROTA's Cabinet by which a general or admiral on the
4 reserve list could no longer be appointed War or Navy
5 Minister, the argument being that it produced little
6 if any effect. Apparently the witness has now thought
7 up some more illustrations in support of that argument,
8 and in our submission they should have been included,
9 if they are of any value at all, in their proper place;
10 and in accordance with the Tribunal's ruling, general
11 matters should not be dealt with here. The illustra-
12 tion does not relate to anything which occurred at the
13 time when HIROTA was in office.

14 With regard to that affidavit, exhibit 2366,
15 I understand it has been put in my friend's list because
16 my friend, Brigadier Nolan, at the time when that
17 exhibit was tendered--the witness being then ill and
18 not available for cross-examination--asked that he be
19 produced at some other time. Today, unfortunately,
20 my friend Brigadier Nolan is absent, unwell, and I am
21 not familiar with the matters about which he desired
22 to cross-examine. I would ask, therefore, that the
23 right to recall the witness for that purpose be pre-
24 served in case my friend Brigadier Nolan desires to
25 exercise it.

1 The document was introduced at page 18,176
2 of the record -- I am told 18,174.

3 The position therefore is, I ask that that
4 right be preserved; I ask that paragraph 1 of the new
5 affidavit be rejected; I do not oppose paragraph 2.

6 THE PRESIDENT: Mr. HANAI.

7 MR. HANAI: The change in the regulations of
8 the War and Navy Ministries was made during Mr. HIROTA's
9 tenure of office. The prosecution has charged that
10 HIROTA is responsible for the added voice which the
11 army thereby came to exercise in politics, and, there-
12 fore, although the change in the regulations themselves
13 belong to the general phase, the change itself has a
14 very important bearing on the individual defense of
15 my client.

16 Although the event related in the affidavit
17 did not occur during HIROTA's tenure of office, the
18 question of the effect of the change does have a very
19 important bearing on his case, and that effect cannot
20 be illustrated unless examples are cited.

21 And the question of whether Brigadier Nolan
22 is or is not present today in order to cross-examine
23 this witness has no bearing on the presentation of
24 this evidence. The appearance of this witness has been
25 shown on our order of proof for some days past, and

1 there are quite a number of prosecutors. Of course,
2 I should like to add, your Honor, that we have no
3 objection to the recalling of this witness at a later
4 stage.

5 THE PRESIDENT: By a majority, the objection
6 is overruled and the document admitted in toto on the
7 usual terms.

8 CLERK OF THE COURT: Defense document 2603
9 will receive exhibit No. 3258.

10 (Whereupon, the document above
11 referred to was marked defense exhibit
12 No. 3258 and received in evidence.)
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1 MR. HANAI: I shall read exhibit 3258.

2 Before commencing reading this affidavit,
3 however, I should like to make one correction in the
4 English text, last line on page. "Lord Keeper of the
5 Privy Seal YUZAWA" should read "YUASA," Y-u-a-s-a.

6 (Reading)

7 "SWORN DEPOSITION

8 "Having first duly sworn an oath as on the
9 attached sheet in accordance with the procedure pre-
10 vailing in my country, I hereby depose as follows:

11 "(1) I have deposed, in my affidavit, exhibit
12 No. 2366, about the reform of the system of the War and
13 Navy Ministries. In spite of the reform, however, there
14 was a way left for those on the reserve list to be
15 appointed War or Navy Minister. The following instance
16 may be of service in proving it.

17 "I participated in the forming of the Cabinet
18 of General UGAKI, Kazushige, when he received the
19 Imperial mandate. He received the Imperial command at
20 Nagaoka, Shizuoka Prefecture, on the night of January
21 24, 1937, and immediately returned to Tokyo in a motor
22 car. On that occasion he was warned by a gendarmerie
23 officer on his way to the Imperial capital that the
24 Army would raise an objection to his forming Cabinet,
25 which proved to be true as soon as he set about

1 selecting the Cabinet members; the War Minister and
2 the Inspector-General of Military Education called on
3 him and advised him to give up the idea of forming
4 the Cabinet. It was hardly possible now to appoint
5 a War Minister, and this proved fatal to the formation
6 of his Cabinet. In this way, many of his surroundings
7 came to think that, under such circumstances, there
8 was nothing for it but to give up all thoughts of
9 forming a Cabinet. But, General UGAKI did not change
10 his mind. He proceeded to the Imperial Palace on
11 January 27, saw Lord Keeper of the Privy Seal YUASU
12 and reported to him the progress of his negotiations
13 with the Army. On that occasion, General UGAKI asked
14 for his advice, suggesting to take either of the follow-
15 ing three countermeasures for the Army's veto:

16
17 "1. To form a cabinet with the position of
18 War Minister left unfilled, and then have the Premier
19 take th charge of the War Minister's business in
20 accordance with the provisions concerning the system
21 of Cabinet.

22 "2. To appoint some well-qualified general
23 or lieutenant-general from the reserve list as War
24 Minister after placing him again on the active list.

25 "3. To ask His Majesty to order some well-
qualified general or lieutenant-general on the active

1 list to co-operate as War Minister.

2 "The Lord Keeper of the Privy Seal, however,
3 replied to the effect that he feared that either of
4 the three countermeasures would trouble the Emperor,
5 and that he had not the heart to put His Majesty to
6 such trouble. He added further that the difficulty
7 concerning the appointment of the War Minister from
8 the viewpoint of the system of Government organization
9 was out of the question and that the key of the prob-
10 lem lay in the strong opposition of the Army. And he
11 revealed that he feared, even if the General succeeded
12 in forming the Cabinet, it would be doomed to collapse
13 soon owing to the Army's opposition. It was impossible
14 for General UGAKI to request to be received in audience
15 by His Majesty and ask for the Imperial decision in
16 this connection. Thus he gave up all his hope and
17 excused himself formally on January 29.

18 "(2) Now I depose as to the circumstances
19 attending the general resignation of the HIROTA
20 Cabinet. In March, 1936, the HIROTA Cabinet was
21 formed. In May of the same year, the House of Repre-
22 sentatives passed a resolution concerning the reform
23 of the Parliamentary system, and in July, the Govern-
24 ment established the Parliamentary System Investigat-
25 ing Committee. Towards the end of October, the Army's

1 opinion pertaining to the reform of the Parliamentary
2 system was published in newspapers, which evoked a
3 great deal of comment and criticism. Especially, the
4 delegates of the House of Representatives who had the
5 majority in the Committee were indignant at it, saying
6 that this was a retrogressive step in constitutional
7 government. The Committee requested the presence of
8 the War Minister at its meeting on December 2 and plied
9 him with many questions with respect to the above
10 opinion of the Army, but it seemed that the replies of
11 the War Minister failed to satisfy the Committee.

12 "This tense atmosphere was brought over
13 into the session which the Diet resumed after recess
14 on January 21, the following year, and developed into
15 Mr. HAMADA's interpellation, demanding the resolution
16 of harakiri of the War Minister. Thereupon, the War
17 Minister demanded the dissolution of the House of
18 Representatives, but the Government rejected it out of
19 respect to the Parliamentary system, asking the Im-
20 perial sanction to recess for two days. The Govern-
21 ment expected that the excitement on both sides might
22 be quieted in the course of time. But, the War Mini-
23 ster being dissatisfied with the attitudes of the
24 Government, tendered his resignation on January 22. "
25 In the light of the opposition on the part of the Army

1 Premier HIROTA judged it difficult to maintain the
2 Cabinet any longer, and the Cabinet resigned en
3 masse on the following day. The date and the reasons
4 for the resignation of the War Minister, accordingly,
5 were different from those of the other cabinet
6 members."

7 Please cross-examine.

8 THE PRESIDENT: Mr. Comyns Carr.

9 MR. COMYNS CARR: If it please the Tribunal,
10 I do not desire to cross-examine on the matter on
11 which I am concerned, namely, paragraph 2 of this
12 affidavit, but I ask that if Brigadier Nolan should
13 desire to cross-examine on the old affidavit, dealing
14 with the question of the change in regulations, he
15 be permitted to deal also with paragraph 1 of this
16 new affidavit, which deals with the same matter.

17 MR. HANAI: The defense has no objection to
18 the prosecution's proposal.

19 THE PRESIDENT: Well, the witness is released
20 on the usual terms. He understands he is liable to be re-
21 called for cross-examination when Brigadier Nolan is
22 available.

23
24 (Whereupon, the witness was excused.)

25 MR. YAMAOKA: May it please the Tribunal, we
respectfully invite the attention of the Tribunal to

1 exhibit 2507, which has already be read into evidence
2 at record 20,967, in order to call attention to the
3 fact that Foreign Minister ARITA, who succeeded Mr.
4 HIROTA as Foreign Minister, stated he would adhere to
5 and follow the three principles announced by Mr.
6 HIROTA, as a basis for reaching an understanding with
7 China. I might add that at that time Mr. HIROTA was
8 Prime Minister.

9 We offer in evidence another excerpt from
10 the Diary of Ambassador Grew, dated November 30, 1936,
11 being defense document 206-C(3), reporting a conver-
12 sation with Prime Minister HIROTA.

13 THE PRESIDENT: Mr. Brown.

14 MR. BROWN: Your Honor, the prosecution ob-
15 jects to this document. I should inform the Tribunal,
16 perhaps, that this is not the first time this document
17 has been offered in evidence. It was previously offer-
18 ed at page 23,181 of the record. Objection was then
19 taken by the prosecution on the ground that it had no
20 probative value, and by a majority the Court upheld
21 the objection and rejected the document.
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1 MR. YAMAOKA: If the Tribunal please, we
2 were not aware of the fact that this had been previously
3 offered and rejected. On the other hand, notwithstand-
4 ing, we are of the opinion that this document is relevant
5 to HIROTA's individual case and I respectfully invite
6 the attention of the Tribunal to paragraph 2, particularly

7 Moreover, it reports an actual conversation
8 between Ambassador Grew and the Prime Minister and shows
9 that even on November 30, 1936 he was still consistent
10 in maintaining his views concerning the Three HIROTA
11 Principles.

12 THE PRESIDENT: By a majority the objection is
13 sustained and the document rejected.

14 MR. YAMAOKA: We offer in evidence defense
15 document 2159. This is an answer made by Mr. HIROTA
16 in the proceedings of the House of Representatives at
17 the 70th session of the Imperial Diet on January 22, 1937.

18 THE PRESIDENT: Mr. Brown.

19 MR. BROWN: Your Honor, the prosecution objects
20 to this document as irrelevant. It merely states that
21 the Japanese Government is not discharging its duties
22 in accordance with Fascist theories, but in the light of
23 public opinion. It is suggested that this is of no
24 help to the Tribunal.

25 THE PRESIDENT: We better hear you Mr. Yamaoka.

1 Have you anything to say?

2
3 MR. YAMAOKA: If the Tribunal please, in our
4 submission, this document meets the issues raised by
5 the prosecution that Japan was conducted along, that is,
6 the country was conducted along totalitarian lines in
7 furtherance of the conspiracy charged in the Indictment.

8 THE PRESIDENT: As such it is an attempt to
9 sway the issue. I realize relevant issues are the
10 counts and not the particulars supported.

11 MR. YAMAOKA: Furthermore, the prosecution
12 has also charged that the relationship between Japan
13 and Germany was one in furtherance of a conspiracy to
14 dominate the world. In our submission, this document
15 does disclose that that relationship was not carried
16 out to the extent contended by the prosecution. It
17 was, furthermore, a contemporary document and shows Mr.
18 HIROTA's views on this subject.

19 THE PRESIDENT: By a majority the objection is
20 sustained and the document rejected.

21 MR. YAMAOKA: If the Tribunal please, Mr.
22 HANAI will present the next witness.

23 THE PRESIDENT: Mr. HANAI.

24 MR. HANAI: May the witness INO, Hiroya be
25 called.

1 H I R O Y A I N O, called as a witness on behalf
2 of the defense, being first duly sworn, testified
3 through Japanese interpreters as follows:

4 DIRECT EXAMINATION

5 BY MR. HANAI:

6 Q State your name and address.

7 A My name is INO, Hiroya. My address, 2288,
8 Kami-Meguro 4-Chome, Meguro-ku, Tokyo.

9 MR. HANAI: May the witness be shown defense
10 document 2596.

11 (Whereupon, a document was handed to
12 the witness.)

13 Q Is that your affidavit bearing your signature?

14 A Yes, it is.

15 Q Are the contents thereof true and correct?

16 A Yes, as you say.

17 MR. HANAI: I now tender defense document 2596
18 in evidence.

19 THE PRESIDENT: Mr. Comyns Carr.

20 MR. COMYNS CARR: May it please the Tribunal,
21 the prosecution objects to the whole of paragraph 2
22 except the first sentence. In our submission, it is
23 entirely irrelevant whether this gentleman did or did
24 not see a number of documents, as to the most important
25 of which we have direct evidence that HIROTA did see it.

1 We also object to paragraph 3 as irrelevant.
2 The witness there purports to speak of something which
3 he says he doesn't know.

4 MR. HANAI: The witness is the one person who
5 knows best whether HIROTA did or did not actually see
6 these documents. All the documents mentioned in para-
7 graph 2 have been used by the prosecution to support
8 their charge that HIROTA was -- to support their charges
9 against HIROTA. If HIROTA, as President of the Bureau
10 of Planning, actually did see these documents, this
11 witness is the one person who is qualified to tell us
12 so.

13 THE PRESIDENT: This only proves that as
14 President of that Board HIROTA didn't learn or see or
15 do anything in connection with these documents.

16 MR. HANAI: All these points could be cleared
17 up through cross-examination of the witness.

18 THE PRESIDENT: The objection is sustained and
19 the document rejected so far as objected to.

20 CLERK OF THE COURT: Defense document 2596
21 will receive exhibit No. 3259.

22 (Whereupon, the document above re-
23 ferred to was marked defense exhibit No. 3259
24 and received in evidence.)

25 MR. HANAI: I shall read exhibit 3259:

1 "(1) I was in the office of Vice-President
2 of the Bureau of Planning (Kikaku-cho), under President
3 HIROTA, Koki, from June 10, 1937, till August 30 of
4 the same year. The Bureau was abolished on October 25,
5 that year, shortly after my resignation from the above-
6 mentioned office. With that, Mr. HIROTA also retired
7 from his office of President.

8 "(2) The chief business of the Bureau of
9 Planning, while I was Vice-President there, was the
10 preparation for the establishment of the Insurance and
11 Sanitation Ministry, which was afterwards realized as
12 'Kosei-Sho.'"

13 THE PRESIDENT: That shouldn't go in. He doesn't
14 appear to know what was objected to.

15 MR. HANAI: I withdraw the portion that I have
16 just read.

17 THE PRESIDENT: The first sentence, I think, is
18 admitted but not the balance of paragraph 2.

19 MR. HANAI: I shall read paragraph 3 --

20 Correction: I shall read paragraph 4.

21 "(4) President HIROTA attended the office
22 once a week or so, and the whole business in general was
23 given in my charge. Mr. HIROTA as President charged
24 himself with the political negotiations with those Cabinet
25 members who had an objection to the draft plan of the

1 Bureau of Planning concerning the constitution and
2 competency of the Insurance and Sanitation Ministry,
3 among whom was Mr. NAGAI, Ryutaro, the then Communications
4 Minister, and with the signing of the documents in
5 connection with the business of the Bureau of Planning
6 at the Cabinet Conference."

7 THE PRESIDENT: Mr. Comyns Carr.

8 MR. COMYNS CARR: Only one question.

9 MR. HANAI: Was the latter half of paragraph
10 2 admitted, may I ask?

11 THE PRESIDENT: That was the part that was
12 objected to. You have omitted nothing material, as far
13 as we can judge.

14 MR. COMYNS CARR: Only one question.

15 CROSS-EXAMINATION

16 BY MR. COMYNS CARR:

17 Q When HIROTA was appointed President of the
18 Bureau of Planning on the 10th of June 1937, was he not
19 also appointed Vice-Premier?
20

21 A No, that is not so.

22 Q In addition to his office of Foreign Minister.

23 A My recollection is that all he was, was Foreign
24 Minister.

25 THE PRESIDENT: We will adjourn until half-
past one.

1 (Whereupon, at 1200, a recess was taken.)

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AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Mr. Yamaoka.

MR. YAMAOKA: If the Tribunal please, my associate, Mr. HANAI, is handling this witness.

THE PRESIDENT: Mr. HANAI.

MR. HANAI: I should like to conduct a brief cross-examination.

REDIRECT EXAMINATION

BY MR. HANAI:

Q "Was there ever an occasion when a document went direct to the president of the Bureau of Planning without first passing through your office, that of the vice-president, in relation to documents and plans such as the 5-Year Plan?

MR. COMYNS CARR: I object to that question. It does not arise out of cross-examination. The only matter on which I cross-examined was whether HIROTA was appointed vice-premier at the same time that he was appointed president of the Planning Bureau.

MR. HANAI: I should like to get the Court's permission to put my question.

1 THE PRESIDENT: We give permission only in im-
2 portant matters. This is of no importance. He could
3 only speak for himself, anyhow. It does not prove any-
4 thing. The permission is refused.

5 MR. HANAI: I should like to get the Court's
6 permission for another question. That is, I wish to ask
7 the witness whether he knows secretary AKIYAMA or not.

8 THE PRESIDENT: That is not important. You
9 don't get that permission as a matter of course. Per-
10 mission is refused.

11 MR. HANAI: I conclude my cross-examination.

12 THE PRESIDENT: Do you want the witness any fur-
13 ther?

14 MR. HANAI: I should like to have the witness
15 excused if there is no cross-examination.

16 THE PRESIDENT: He is excused on the usual terms.
17 (Whereupon, the witness was excused.)

18 MR. YAMAOKA: May it please the Tribunal, we
19 offer in evidence defense document 2067. This document is
20 an excerpt from the "Minutes of the Subcommittee of the
21 Heads of Delegations on Pacific and Far Eastern Questions
22 (Washington Conference 1921 - 22)." The document is offered
23 to show the meaning and construction placed upon Article 7
24 of the Nine-Power Pact by the delegates who framed the
25 Pact.

1 THE PRESIDENT: Mr. Brown.

2 MR. BROWN: Your Honor, the prosecution objects
3 to this document, which, in our submission, in no way
4 clarifies the meaning of Article 7. It is a discussion
5 of a sub-committee in Washington in 1921 and 1922. As
6 to the meaning of it, whatever conclusion the committee
7 might or might not have reached would, in our submission,
8 be irrelevant, as the document speaks for itself.

9 THE PRESIDENT: Shouldn't this have been tendered
10 in the general phase, in any case?

11 MR. BROWN: That is exactly what I was going to
12 say next, your Honor. And lastly, it is quite clear that
13 the chairman, even had he had the power to do so, did not
14 purport to give a final decision as to the meaning of this
15 article. Whether he had authority to give a ruling as
16 to its meaning we do not know, but he says, in the first
17 place, he "supposed that it meant ..." On the next page
18 he says he "believed they would..." Over the page the
19 chairman thought the article meant a little more.

20 It is suggested that this document has no pro-
21 bative value.

22 THE PRESIDENT: What is the purpose of tendering
23 this document, Mr. Yamaoka?

24 MR. YAMAOKA: If the Tribunal please, we are
25 tendering this document since it has an important bearing

1 upon Japan's position in refusing the invitation to the
2 Brussels Conference, a point upon which the prosecution
3 relies in support of their case; and I may add I believe
4 later proof by other witnesses will show that the HIROTA
5 Government did rely upon this extract.

6 Now, specifically as to the relevancy of a docu-
7 ment of this nature, it would seem to me that it is not
8 unusual to introduce into evidence hearings before com-
9 mittees, of legislation pending before, let us say, a
10 legislature, in order that the proper interpretation can
11 be given to the terms of a piece of legislation or, let
12 us say, a treaty; and whereas here Japan relied upon this
13 proof in order to refuse the invitation to the conference,
14 it would seem, in our submission, to have very definite
15 probative value and relevancy.

16 It further goes to the point of whether or not
17 there was a violation by Japan in refusing to attend that
18 conference.

19 As to the further point, if your Honors please,
20 as to whether or not this was a matter that should have
21 been presented in the general phase, I wish to state in
22 the individual case of the accused HIROTA, since he was one
23 of the principal dramatis personae, the fact that evidence
24 on his behalf may be intertwined with matters pertaining
25 to the general phases is something which is inherent in

the case.

1 THE PRESIDENT: By a majority the Court sustains
2 the objection and rejects the document.

3 MR. YAMAOKA: If the Tribunal please, I should
4 like to deviate here from my order of proof and I should
5 like to call for document No. 56 on our order of proof
6 instead of 54 at this moment, and I request that the
7 witness HOFINOCHI, Kensuke be called.
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1 K E N S U K E H O R I N O U C H I, called as a
2 witness on behalf of the defense, being first
3 duly sworn, testified through Japanese inter-
4 preters as follows:

5 DIRECT EXAMINATION

6 BY MR. YAMAOKA:

7 Q Will the witness kindly state his name and
8 address?

9 A My name is HORINOUCI, Kensuke. My address
10 is 871 Shimo-Meguro 4-chome, Meguro-ku, Tokyo.

11 MR. YAMAOKA: May the witness be shown
12 defense document 2147?

13 (Whereupon, a document was handed
14 to the witness.)

15 Q Is that your affidavit?

16 A Yes.

17 Q Is it, in all respects, true and correct?

18 A I wish to make two corrections.

19 Q Will you kindly state them?

20 A The first correction -- in the second para-
21 graph on page 3, towards the middle, "Director
22 MACHIJIRI of the Bureau of Military Affairs" should
23 be changed to "Director MACHIJIRI of the Military
24 Administration Section." That is correction No. 1.
25

1 On page 5, the second paragraph of the
2 numbered paragraph 8, I should like to have the last
3 sentence of that paragraph taken out, namely, "Britain
4 also took a similar measure, as I remember, shortly
5 after that."

6 This has nothing to do with the Japanese
7 text because the Japanese text has already been
8 corrected -- is correct.

9 MR. YAMAOKA: If the Tribunal please, I offer
10 in evidence defense document 2147, as corrected by
11 the witness.

12 THE PRESIDENT: Mr. Comyns Carr.

13 MR. COMYNS CARR: If the Tribunal please,
14 the prosecution objects to the whole of this affi-
15 davit on various grounds:

16 From the beginning to the end of the first
17 portion of paragraph 6 on page 4 on the ground on
18 which I successfully objected to a large number of
19 paragraphs yesterday, in the affidavit of KUWASHIMA,
20 namely, that it is all concerned with matters, acts,
21 opinions and statements of ARITA, from whom an affi-
22 davit has been served upon us in this section, and who
23 therefore is the proper person to deal with these
24 matters. Assuming them to be relevant in HIROTA's
25 case at all, he is not mentioned during the whole of

that portion of the affidavit.

1 A subsidiary objection is that the affidavit
2 contains references to and relies upon documents
3 which have already been rejected by this Tribunal as
4 irrelevant, namely, in the last paragraph but one of
5 paragraph 4 on page 3, defense document 1423, which
6 was rejected although I see it is proposed to tender
7 it again.
8

9 At the top of page 4, reliance is placed
10 upon a number of documents relating to the Communist
11 International which were rejected by this Tribunal.
12 In addition, there is a great deal of opinion,
13 chiefly what is said to be ARITA's opinion but some-
14 times the 'witness', particularly in paragraph 5,
15 but scattered throughout the document.

16 With regard to the last part of paragraph 6,
17 and the whole of paragraph 7, it relates to attempts
18 to induce Great Britain and the Netherlands to join
19 in the Anti-Comintern Pact, a subject which is, in my
20 submission, irrelevant as the Tribunal ruled when they
21 rejected defense document 1424, at page 22,504 of the
22 record.
23

24 I should have said that the documents as to
25 the Communist International are not even being tendered
again; they are simply treated as though they were

1 in evidence when they are not.

2 Paragraphs 8 to the end relate to the
3 attitude of the HIROTA Cabinet and the HAYASHI
4 Cabinet, which latter is irrelevant in this phase, in
5 any event, to the proposed inclusion of Italy in the
6 Anti-Comintern Pact. In the part relating to the
7 HIROTA Cabinet the witness is obviously speaking on
8 matters to which either HIROTA or ARITA could much
9 more properly direct the attention of the Tribunal,
10 and it is full of the witness' opinions as to what
11 was the attitude of the Cabinet.

12 Finally, on page 6 there is a great deal of
13 the witness' opinion as to the unpopularity of Japan
14 with the other nations of the world, particularly in
15 1937, and the causes thereof. And finally it comes to
16 the only matter which is possibly relevant, namely,
17 the circumstances under which Italy was admitted into
18 the Anti-Comintern Pact, but the description of that
19 is so full of opinion as to be extremely difficult to
20 sever it from fact.

21 The last two paragraphs on page 9 merely state--

22 THE PRESIDENT: Page 7, is it not?

23 MR. COMYNS CARR: Page 7. I mean paragraphs
24 9 and 10 on page 7 merely make assertions which the
25 witness is obviously not qualified to make as to

1 whether HIROTA was concerned in the conclusion of
2 the Japanese-German-Italian Tripartite Pact, a matter
3 which took place entirely after the witness, accord-
4 ing to his own account, had ceased to hold any office
5 whatever.

6 I should not have included paragraph 10 in
7 that statement. That merely states that a certain
8 committee was not appointed and is, in my submission,
9 an irrelevant circumstance.
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THE PRESIDENT: Mr. Yamaoka.

MR. YAMAOKA: May it please the Tribunal, in reply I desire to point out that the present witness was Vice-Minister for Foreign Affairs in the HIROTA Cabinet during the periods matters testified to here occurred; and in that official position it is not unnatural to suppose that he was well aware of the matters to which he testifies here.

As to the question of whether or not Foreign Minister ARITA should be the proper party to testify, so long as matters are within the knowledge of this witness I am unaware of any rule requiring that we should be obliged to call Mr. ARITA. If there is any question, I respectfully submit, as to the credibility of this witness, why, then the matter could be properly elicited on cross-examination. Moreover, the Tribunal will recall that the Anti-Comintern Pact, together with the secret agreement annexed, was introduced as prosecution exhibit No. 36, I believe, and is an important item in the chain of the prosecution's case.

Specifically as to some of these paragraphs, No. 1 to which my learned friend objected -- I believe he did object to No. 1 -- I don't think is a proper objection.

1 MR. COMYN-CARR: I did include No. 1, but
2 that would go, of course, if the rest goes. It is
3 merely the witness' career. If any part of the affi-
4 davit remains, then No. 1 would remain.

5 MR. YAMAOKA: Paragraphs 2 and 3 down to
6 and including 6 describes the activities of the
7 Foreign Office concerning the conclusion of the Anti-
8 Comintern Pact by a party who was in his official
9 position entrusted with these matters.

10 I desire further to point out that in para-
11 graph 3 the telegraphic instruction which is men-
12 tioned is already an exhibit in the case, exhibit
13 2614. Also, in this paragraph, it mentions that the
14 Foreign Minister did reveal his views to the Prime
15 Minister HIROTA.

16 As to paragraph 4, the matters to which the
17 witness testifies, that is, the documents in support
18 of the matters to which he testifies, are shown to
19 have been lost by fire and the originals cannot be
20 found.

21 Also on page 3 of the affidavit, still deal-
22 ing with paragraph No. 4, my learned friend men-
23 tioned defense document 1423 as having been previous-
24 ly rejected. As to that he is quite correct. But,
25 upon reading the record, if I am not mistaken, I

1 believe it was rejected because there was not suf-
2 ficient certification as to the source of this docu-
3 ment when it was first presented. Now that it is
4 identified by this witness as being a proper Foreign
5 Office document, we are tendering it subsequently
6 on the order of proof.

7 As to paragraph 6, page 4, I respectfully
8 invite the attention of the Tribunal to the fact
9 that the document mentioned at the very end of para-
10 graph No. 6 is defense document 1425.

11 As to paragraph No. 7, the last paragraph
12 of this -- this numbered paragraph which appears on
13 page 5 of the English copy, the Tribunal will note that
14 documents are mentioned, and these documents will be
15 tendered later, being numbered 61 on our order of
16 proof, defense document 1424.

17 I understand that this was previously re-
18 jected, that is, this last document, but we are re-
19 submitting it later on our order of proof; and I
20 think at the present time, if the testimony of this
21 witness is accepted, that lays a sufficient founda-
22 tion for the submission of this document even though
23 it was previously rejected.

24 With reference to the HAYASHI Cabinet,
25 which was after Mr. HIROTA was in office, I desire

1 to state that, as the Tribunal no doubt is well
2 aware, the HAYASHI Cabinet existed for only a few
3 months following the HIROTA Cabinet; and thereafter,
4 when the first KONOYE Cabinet was formed, Mr. HIROTA
5 again became Foreign Minister.

6 As to paragraph 9 and 10, as to the question
7 whether or not the matters are proper, to which this
8 witness can testify since he was not in service as
9 Vice-Foreign Minister, I desire to state that he
10 still was in the employ of the Foreign Office. If
11 I am not mistaken, that will be disclosed by para-
12 graph No. 1 of the affidavit.

13 With respect to the Communist Internationale,
14 if I am not mistaken, I believe the Tribunal ruled
15 that if, at any time in the individual cases, it
16 could be shown that the individual accused relied
17 upon the matters which we then presented during that
18 phase of the case earlier this year, then the evi-
19 dence concerning those matters could be introduced
20 in the individual phase.

21 As to the further question, if your Honors
22 please, as to whether or not the activities by Japan
23 to conclude similar pacts with the other nations,
24 that is to say, other than the Axis Powers, is rele-
25 vant or not, in our submission we think it is rele-

1 vant in order to meet the issue raised by the prose-
2 cution. As I understand that issue it is that Japan,
3 together with the Axis nations, conspired to dominate
4 not only East Asia but the world by means, among
5 others, of, specifically, the Anti-Comintern Pact
6 and other proof which is already in the case. And
7 I respectfully submit that, if proof is tendered to
8 show that similar pacts were tendered to countries
9 other than the Axis, that is clearly relevant to
10 **rebut** the prosecution's evidence as well as to show
11 that there was no such intention on the part of Japan
12 at all.

13 For all these reasons I respectfully submit
14 that the document should be admitted.

15 THE PRESIDENT: By a majority the objection
16 is sustained and the document rejected.

17 MR. YAMAOKA: In the light of the Tribunal's
18 ruling may I request a direction? If, in the Tri-
19 bunal's opinion, Mr. ARITA is the proper witness con-
20 cerning these matters, we should like to present this
21 evidence through him.

22 THE PRESIDENT: We will receive any relevant
23 and material evidence from ARITA. I cannot undertake
24 to tell you how far each Member of the Tribunal is
25 influenced by the objections. All I can say is that

1 a majority sustain them.

2 MR. YAMAOKA: If your Honors please, we are
3 confronted with this problem: Mr. ARITA probably
4 will be called within the next day or two; and,
5 under the rules of the Tribunal, we should have an
6 affidavit prepared and served at least on the Members
7 of the Tribunal three days in advance.

8 THE PRESIDENT: We will consider your
9 application for some enlightenment on this point,
10 Mr. Yamaoka. At present I cannot give you any infor-
11 mation.

12 MR. YAMAOKA: Well, then I shall make the
13 application at the time we call the witness ARITA.

14 I ask that defense document 2146 be handed
15 the witness.

16 (Whereupon, a document was handed
17 to the witness.)

18 BY MR. YAMAOKA (Continued):

19 Q Is that your affidavit?

20 A Yes.

21 Q Is it in all respects **true and correct**?

22 A It is true and correct with the exception
23 of three corrections.

24 Q Will you point those corrections out?

25 A On page 1 of the English text, in the middle

1 of the numbered paragraph 2, "Marquis KIDO, who was
2 the Chief Secretary to the Lord Keeper of the Privy
3 Seal" should be corrected to "Marquis KIDO who was
4 the President of the Bureau of Peers."

5 The second correction concerns a typographi-
6 cal error in the Japanese original and has no rela-
7 tion to the English text.

8 The third correction is on page 4 of the
9 English text, line 11 of paragraph numbered 12.
10 "The interview took place on the 8th" should be cor-
11 rected to "The interview took place on the 10th."

12 Q Is that all?

13 A Yes, that is all.

14 MR. YAMAOKA: If the Tribunal please, I
15 note on paragraph No. 1 on page 1 of this document
16 the last line, "May 26, 1936" is obviously an error
17 and should be "1938."

18 THE PRESIDENT: 1933?

19 MR. YAMAOKA: 1938. And I have also noted
20 another error in the English copy, page 4, paragraph
21 numbered 10, third line from the bottom of that para-
22 graph. It says "the agreement of August 11." I
23 understand that this should be "agreement of July
24 11."
25

I now offer in evidence defense document

2146 as corrected.

THE PRESIDENT: Mr. Comyns Carr.

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1 MR. COMYNS CARR: May it please the
2 Tribunal, the prosecution objects to certain parts
3 of this affidavit only.

4 Paragraph 2, on the ground that it is
5 irrelevant. It describes circumstances under which
6 HIROTA became Foreign Minister in the First KONOYE
7 Cabinet and various people who recommended him for
8 that post. In my submission that is merely an
9 attempt to get in character evidence by a side wind
10 and is, for any other purpose, irrelevant.

11 Paragraph 3 is objected to on the ground
12 that it is partly repetition of evidence given by
13 other witnesses and partly a summary of his previous
14 affidavit which has just been rejected.

15 In paragraph 15 on page 5 there are two
16 sentences to which we object. One is in the middle
17 of the first subparagraph about the opinion of the
18 people of Japan and the other is from the second
19 sentence in the second paragraph beginning with,
20 "But the public opinion of Japan," down to the
21 middle of the first line on page 6. In our submis-
22 sion neither the witness nor anybody else is entitled
23 to tell us what was the opinion of a mixed body of
24 people, nor would it be relevant if they could.

25 There is a similar sentence, two sentences,

1 to which we object in paragraph 18 on the middle of
2 page 7, beginning in the middle of subparagraph 2--
3 not the numbered one, the second subparagraph,
4 "Drastic opinions," down to "by such circumstances";
5 and we object to the last sentence in paragraph 20
6 about something which General UGAKI tells somebody
7 else to do as being irrelevant to the case of HIROTA.

8 MR. YAMAOKA: If the Tribunal please--

9 THE PRESIDENT: Mr. Yamaoka.

10 MR. YAMAOKA: With respect to paragraph
11 numbered 2, we believe that this is relevant and
12 material in showing how Mr. HIROTA came to assume
13 the office of Foreign Minister in the KONOYE Cabinet.
14 We do not believe that this is character evidence and
15 if at all it will show that Mr. HIROTA was not part
16 of any conspiracy in joining the KONOYE Cabinet. We
17 think that the circumstances surrounding his assump-
18 tion of office as set forth here will be helpful to
19 the Tribunal in understanding the accused's case.

20 As to paragraph numbered 3, while it is true
21 that the subject matter has been previously testified
22 to in the case, this witness was in an official posi-
23 tion to know about these negotiations and it was in-
24 cluded very briefly for the purpose of telling a
25 rounded out story.

1 As to the objections to paragraph numbered
2 15, the sentences relative to Japanese public opinion,
3 although the word opinion is used, this, I do not
4 believe, is a statement of opinion by the witness.

5 THE PRESIDENT: That is not the objection.
6 The objection is that it is too much for any one man
7 to say and it certainly does not involve an opinion
8 on the part of the person expressing the opinion.
9 However, if public opinion could be relevant, I do
10 not know how else you could establish it.

11 MR. YAMAOKA: I was going to add, if your
12 Honor please, that this public opinion is naturally
13 a matter of vital concern to men in public office
14 because they rely upon it and act upon it, while
15 admittedly it may be difficult of ascertaining.

16 As to the objection in paragraph 18, I
17 believe that my point just discussed covers this
18 matter.

19 I believe that covers the principal points
20 of the objections.

21 THE PRESIDENT: By a majority the Court
22 sustains the objections and admits the document to the
23 extent not objected to, on the usual terms.

24 CLERK OF THE COURT: Defense document 2146
25 will receive exhibit No. 3260.

(Whereupon, the document above
referred to was marked defense exhibit
No. 3260 and received in evidence.

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1 MR. YAMAOKA: I shall read exhibit 3260 to
2 the extent admitted, omitting the formal part:

3 "(1) I received an appointment as a diplomatic
4 attache on December 2, 1911, and remained in the
5 diplomatic service until I retired on December 21, 1940.
6 During that period I was appointed Vice-Minister for
7 Foreign Affairs under Mr. Hachiro ARITA, the Foreign
8 Minister of the HIROTA Cabinet, on April 10, 1936,
9 and remained in the office until I was appointed
10 Ambassador to the United States on October 15, 1938.
11 Of the same period, I was under Foreign Minister HIROTA
12 in the First KONOYE Cabinet from June 4, 1937 to
13 May 26, 1938."

14 * * *

15 "(4) The Foreign Office did not have the
16 slightest inkling of this incident. The official
17 telegram reporting its outbreak reached Tokyo on
18 July 8, 1937, the following day. Foreign Minister
19 HIROTA was at his villa at Kugenuma and had already
20 been in bed when he received a telephone call from
21 the Foreign Office, reporting the outbreak of the
22 incident.

23 "The Foreign Office's policy was to make its
24 utmost effort in seeking an amicable settlement of the
25 matter as soon as possible. An extraordinary meeting

1 of the Cabinet council was held on July 9, and decided
2 the attitude of the Government to hold fast to the policy
3 to arrest the spread of the disturbance and to seek a
4 prompt, local settlement of the matter. This decision
5 was made largely due to the opinion of Foreign Minister
6 HIROTA.

7 "(5) Meanwhile, in North China, Major-General
8 Gun HASHIMOTO, the then Chief of the Staff of North
9 China Stationary Force, and others negotiated with
10 the Chinese 29th Army, reaching an agreement at 8:00
11 P.M. on the 11th. The Chinese 29th Army accepted the
12 following demands of the Japanese Army.

13 "(I) The representative of the 29th Army
14 should express their regret, punish the responsible,
15 and make a vow that recurrence of such event should
16 be prevented.

17 "(II) As the concentration of Chinese troops
18 near Fengtai where Japanese forces are stationed is
19 liable to cause untoward incidents, the Chinese troops
20 stationed at the citadel of the Marco Polo Bridge and
21 Lungwangmiao should be withdrawn, and police forces
22 should take their places.

23 "(III) Anti-Japanese organizations should be
24 kept under strict control.

25 "These terms seemed to be carried by the

Chinese into execution somehow or other before July 22.

"But, in the meantime, there occurred frequently skirmishes between the Japanese and the Chinese troops, as the latter, once withdrawn, reappeared in the areas in question, and the situation called for prudence and caution.

THE PRESIDENT: We will recess for fifteen minutes.

(Whereupon, at 1445, a recess was taken until 1500, after which the proceedings were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Yamaoka.

4 MR. YAMAOKA: May it please the Tribunal,
5 I will continue reading this exhibit.

6 "(6) Prior to this, it was arranged that
7 an extraordinary session of the Cabinet council
8 was to be held on July 11, and it was reported that
9 the army would propose preliminary measures for
10 mobilization. The Foreign Minister was again at
11 his villa at Kugenuma from the evening of July 9.
12 The programme was immediately reported to him by
13 telephone, and on the morning of July 11 he arrived
14 at Shimbashi Station around 9 o'clock. As soon as
15 he reached the Foreign Office he assembled myself,
16 East Asiatic Director ISHII and European-Asiatic
17 Director TOGO in his office to deliberate upon the
18 reported army's proposal, and it was decided that
19 the proposition should be opposed. The Foreign
20 Minister soon attended the Cabinet meeting, and
21 the following results were reported afterward.
22 "First, War Minister SUGIYAMA explained
23 the plan for the preliminary arrangements for
24 mobilization. It was made clear by this explanation
25 that the plan was not to make immediately arrangements

1 for mobilization. It might have more properly been
2 said just preparing for the preliminary arrangements
3 of mobilization. It amounted to the decision of
4 the Cabinet to envisage eventual preparatory
5 measures for mobilization in case the situation
6 assumes more serious proportions. The Foreign
7 Minister suggested, however, that the matter might
8 have already been settled locally by that time, and
9 took the position that the consideration of the
10 army proposal in question should be postponed until
11 further reports reached the government.

12 "Thus the discussion was once postponed.
13 But, the awaited report being so late in coming,
14 the cabinet council was assembled again on the same
15 day and was compelled to approve the army proposal
16 which provided that, in order to secure the apology
17 and future guarantee by the Chinese, necessary forces
18 in the homeland should also be mobilized while con-
19 tingents from the Kwantung Army and the Chosen Army
20 were to be dispatched to reinforce the North China
21 Stationary Force, and that all possible efforts
22 should be made for a peaceful settlement of the
23 incident in conformity with the policy of local
24 settlement, and also that the dispatch of the troops
25 should immediately be stopped when the above-

1 mentioned object was attained and the apology
2 and future guarantee were fulfilled by the Chinese.

3 "Foreign Minister HIROTA consented to this
4 decision with reservations that the dispatch of
5 troops, even when it was carried into execution,
6 should be exclusively for the purpose of protect-
7 ing the Japanese residents and securing the safety
8 of the North China Stationary Force itself which
9 was comparatively small in strength, and that the
10 decision for the mobilization of home troops was
11 nothing more than an attitude of preparedness as
12 contended by the War Minister.

13 "(7) Holding fast to the policy of
14 speedy local settlement of the incident, the Foreign
15 Office was determined to spare no effort for its
16 attainment. By the Foreign Minister's order, I
17 asked Mr. Yang Yun-chu, the Chinese Charge d'Affaires
18 to call at the Foreign Office on the morning of
19 July 11, and called the attention of the Chinese
20 Government to the critical situation in North China,
21 urging the necessity of a quick local settlement.
22 I also told him that instructions to the same effect
23 had been given early in that morning to the Japanese
24 Ambassador to China.

25 "(8) Mr. KAWAGOME, the Japanese Ambassador

1 to China, was on his journey to North China, at
2 that time, leaving Shanghai on the very day of
3 the outbreak of the incident, and Councilor HIROTA
4 executed the instructions on his behalf. Mean-
5 while, we successfully received authoritative
6 reports that the Nanking Government, in spite of
7 our representations made at Nanking as well as at
8 Tokyo, were dispatching reinforcements, troop after
9 troop, to North China. The Chinese 29th Army also,
10 probably influenced by such military actions of the
11 Nanking Government, became to show a dubious atti-
12 tude in connection with the execution of the three
13 terms of settlement agreed upon on July 11. The
14 Foreign Office, thereupon, ordered Councilor
15 HIROTA by wire on July 16 to call upon the Nanking
16 Government not to interfere with the execution of
17 the three terms, and to check the northward move-
18 ment of the Chinese central armies. Nevertheless,
19 the central armies were reported still advancing
20 northward as before.

21 "(9) In view of such attitude on the part
22 of China, the cabinet decided at its meeting of
23 July 20 that, in order to meet emergency, prepara-
24 tions should be made for the mobilization of three
25 home divisions.

1 "The Foreign Office, however, did not
2 give up the hope of amicable settlement, and had
3 Councilor HIDAKA pursue in earnest the negotia-
4 tion in Nanking. Unfortunately, there again oc-
5 curred armed clashes between the Japanese and
6 Chinese forces in North China since July 25 or 26.
7 The situation thus making serious developments,
8 the orders for the mobilization of three home
9 divisions were at last issued on July 27. From the
10 early morning of the following 28th onwards, the
11 hostilities in North China went on spreading. More-
12 over, Shanghai and its vicinity, where the situation
13 had been comparatively tranquil, turned disquieting.
14 Thus all the efforts of Councilor HIDAKA in Nanking
15 proved fruitless.

16 "(10) In Tokyo, Mr. Dodds, the British
17 Charge d'Affaires, called on me on July 15, and
18 asked if Britain could be of any service in settling
19 the incident. I told him in reply that I thought
20 there were prospects of local settlement. From that
21 day on till about July 20, Mr. Dodds came to see me
22 almost every day and kept me informed of the gist
23 of the conversations between Ambassador Huggessen
24 and the Chinese Foreign Minister. On these occa-
25 sions, I always told him that we had not yet given

1 up our hope to settle the incident locally. On
2 the 22nd, American Ambassador Grew made an offer
3 to Foreign Minister HIROTA that his government
4 would render its services, if necessary, in the
5 way short of mediation. But the Foreign Minister
6 replied that, in the light of the actual situation
7 of North China about the 19th, there was still some
8 hope that the agreement of August 11 might be
9 carried into execution. Actually the Japanese
10 Foreign Office had not given up the hope of local
11 settlement then, and was making desperate efforts.

12 "(11) It was in July that a draft of
13 terms of settlement with China was worked out as
14 a result of the deliberation among the competent
15 authorities of the Foreign Office, the War Office,
16 and the Ministry of the Navy. It consisted of
17 three main points: (A) the establishment of un-
18 fortified zones along the River Pai-ho, and the
19 withdrawal of Japanese and Chinese troops from the
20 areas specified as such; (B) no annexation of
21 territories; and (C) no indemnities. The draft
22 was approved on August 5 by the Foreign Minister,
23 the War Minister, the Minister of the Navy and the
24 Premier.
25

"(12) Early in August, Foreign Minister

1 HIROTA made up his mind to dispatch Mr. Tatsuichiro
2 FUNATSU, an authority on China, to Shanghai, in an
3 attempt at restoring peace between Japan and China.
4 Mr. FUNATSU's mission was to have talks, on the
5 lines of the said peace terms decided upon in
6 August, with Mr. Kao Tsung-wu, the Chief of the
7 Asiatic Bureau of the Chinese Foreign Office, who
8 had a direct contact with Generalissimo Chiang Kai-
9 shek. Mr. FUNATSU left Tokyo about August 5, arriv-
10 ing at Shanghai on the 7th. Ambassador KAWAGOYE,
11 on the other hand, returned to his post in Shanghai
12 almost at the same time. And, on deliberation
13 between the two, it was decided that Ambassador
14 KAWAGOYE in person would negotiate with Mr. Kao
15 Tsung-wu. The interview took place on the 8th.
16 As the Ambassador revealed the three terms of the
17 August plan as his personal propositions, Mr. Kao
18 stated that he thought there were prospects of
19 peaceful settlement between Japan and China upon
20 these terms, and promised that he would promptly
21 return to Nanking to make a report to Generalissimo
22 Chiang Kai-shek, and then again see Ambassador
23 KAWAGOYE in Shanghai. But, it happened that a
24 Japanese naval officer was killed by Chinese
25 soldiers on August 9 (the so-called OYAMA incident),

1 and from the 13th on, both Japanese and Chinese
2 forces entering into hostilities even in Shanghai
3 district, the communication was utterly suspended
4 between Nanking and Shanghai. The KAWAGOYE-Kao
5 interview ended, in this way, without tangible
6 results.

7 "(13) Even after that, Foreign Minister
8 HIRO did not give up his hope to find a clue of
9 an amicable settlement of the incident. He asked
10 Mr. ARITA, who had been Foreign Minister in the
11 HIROTA Cabinet, to go to Shanghai where the leading
12 figures of the Nanking Government gathered often,
13 and stay there for some time to seize a chance of
14 having informal talks with them. Mr. ARITA accepted
15 it, and, on deliberation between the two, it was so
16 arranged that he would first visit Manchuria and
17 North China, staying there until the Foreign
18 Minister wired him and let him know the proper time
19 to start for Shanghai. Mr. ARITA left Tokyo on
20 August 28 on his tour of inspection in Manchuria,
21 Peking, Tientsin and other places, but, as the
22 situation did not take a favorable turn for his
23 visit to Shanghai as expected, he was compelled to
24 leave Dairen for Tokyo at the end of September.
25

"(14) It was in September after the

1 KAWAGOYE-Kao conversation proved failure that the com-
2 petent chiefs of bureaus of the Foreign Office, the
3 War Office, and the Ministry of the Navy assembled to
4 talk over how to deal with the peace problem there-
5 after, reaching an agreement that, if the endeavor
6 after peace was to be continued at all, there was no
7 other way for it but to ask for the good offices of
8 a third power to find settlement with China on the
9 terms of the August plan. This opinion was presented
10 to the government, and was approved by the Premier, the
11 Foreign Minister, the War Minister, and the Minister of
12 the Navy.

13 "Almost at the same time as the above, the
14 chiefs of the bureaus concerned assembled, by the
15 orders of the ministers concerned, to discuss the policy
16 which the government was to adopt in connection with
17 the various problems of the China Affair. They, how-
18 ever, could not attain agreement on two or three points.
19 Thereupon, I conferred with the Vice-Ministers of War
20 and of the Navy, and settled the points. This was
21 decided as the policy of the government on October 1,
22 with the approval of the Premier, the Foreign Minister,
23 the War Minister, and the Minister of the Navy. The
24 point which demands our special attention is that this
25 'Shina-Jihen Taisho Yoko' (The Gist of the Policy for

1 the Settlement of the China Affair) stipulated (a)
2 to bring the China Affair to the quickest possible
3 conclusion, (b) to act strictly in conformity with
4 the international law, (c) to limit the scene of battle
5 chiefly within the provinces of Hopei and Chahar as
6 well as Shanghai district, and (d) to strive for the
7 settlement of the North China question along the lines
8 of policy that the said area should be placed under
9 the administration of the Chinese Central Government.

10 "(15) On September 21, the League of Nations
11 requested the Japanese Government to participate in
12 the Twenty-Three Power Consultative Committee. Japan,
13 however, had seceded from the League on March 27, 1933.
14 Since then, it had maintained a firm attitude not to
15 participate in any political activity of the League
16 of Nations. . . The Japanese Government, thereupon,
17 made a reply on September 25 to the effect that it
18 could not accept the said request of the League of
19 Nations.

20 "On October 20 and November 7 of 1937, the
21 Belgian Government invited Japan to participate in
22 the Brussels Conference which was to be held in ac-
23 cordance with the provisions of Article VII of the
24 Nine-Power Pact. . . The Japanese Government was com-
25 pelled to reply to the Belgian requests of October 20

1 and November 7, on October 27 and November 12 re-
2 spectively, that it could not accept the same. With
3 respect to Article VII of the Nine-Power Pact, the
4 Foreign Office authorities held the following inter-
5 pretation:
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3 respect to Article VII of the Nine-Power Pact, the
4 Foreign Office authorities held the following inter-
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"Article VII of the Nine-Power Pact runs:

1 'The contracting Powers agree that whenever a situation
2 arises which in the opinion of any one of them involves
3 the application of the stipulations of the present
4 Treaty, and renders desirable discussion of such appli-
5 cation, there should be full and frank communication
6 between the contracting Powers concerned.' Either
7 in the light of the wording of the article or in con-
8 sideration of the circumstances under which the said
9 article was referred to discussion at the first meeting
10 of the Subcommittee for the Pacific and Far Eastern
11 Problems of the Washington Conference (held on
12 February 2, 1922), it is evident that 'communication'
13 here means communication in any form, and not necessarily
14 that in the form of conference. Moreover, the proceed-
15 ings of the said subcommittee show that the communica-
16 tion should be made, as a general rule, through ordinary
17 diplomatic channels, and the communication in the form
18 of conference is not in the least expected.
19

20 "In accordance with such interpretation, the
21 Foreign Office understood that to reject the partici-
22 pation in the Brussels Conference was not against the
23 provisions of the Nine-Power Pact inasmuch as the par-
24 ticipation was expected to be detrimental to the internal
25 affairs of Japan.

1 "(16) Early in September, British Ambassador
2 Creigie arrived at his post in Tokyo. He was such an
3 enterprising man that he set about settling the case
4 of Ambassador Huggessen's accident of August 26 as soon
5 as he took up his duties. He had frank talks with Vice-
6 Admiral YAMAMOTO, the Vice-Minister of the Navy, and
7 myself, succeeding in solving the problem soon.

8 "On October 27, the Foreign Minister, in an
9 individual interview with the Ambassadors of Britain,
10 the United States, Germany and Italy, told them that
11 the Japanese Government could not accept the invitation
12 to the Brussels Conference, but desired to have either
13 of the four powers use its good offices for bringing
14 about direct peace negotiations between Japan and China
15 upon the terms of the August plan. And, as the British
16 Ambassador soon called upon the Foreign Minister and
17 informed him of his government's willingness to use
18 its good offices for negotiations between the two
19 countries, the Foreign Minister accepted. Between them
20 there were several exchanges of views concerning terms
21 of settlement. But, as it was realized afterwards that
22 there was strong opposition within the army against
23 Britain acting as a go-between, the scheme had to be
24 held in abeyance.
25

"A similar offer was made also by American

1 Ambassador Grew almost at the same time, though on
2 condition that both governments of Japan and China
3 asked for it. This offer of the American Ambassador,
4 however, did not materialize after all.

5 "(17) The army maintained to ask for the good
6 offices of the German Government. But the Foreign
7 Minister hesitated, as he doubted if the services of the
8 German Government alone, which did not have strong voice
9 in China, were really effectual. In the meantime,
10 British Ambassador Craigie made a suggestion for the
11 joint services of Britain, the United States and Germany,
12 for fear of the inefficacy of the efforts of the single-
13 handed Germany. The army's objection against the par-
14 ticipation of Britain and the United States, however,
15 was too obvious. The Foreign Minister, thereupon, asked
16 Ambassador Craigie to take the initiative in requesting
17 Germany to let the other powers participate in the
18 attempt, for it was expected that, inasmuch as Germany
19 herself agreed to act in concert with Britain and the
20 United States, the army also might possibly consent
21 to their cooperation. But, it was reported later by
22 Ambassador Craigie that, in response to his request,
23 he was told by the German Ambassador to the effect that,
24 as the approach to the Chinese Government still remained
25 in the stage of sounding, consideration would be given

1 later to the proposal of Britain and the United States
2 after it attained the stage that China responded to
3 the Japanese efforts.

4 "One day in December, the Foreign Minister
5 received a personal letter from German Ambassador
6 Dirksen saying that he had an important matter to dis-
7 cuss with the Foreign Minister, and that he wished to
8 invite the Foreign Minister to tea, as he could not
9 get out on account of illness. The Foreign Minister
10 called upon the German Ambassador, and was told that,
11 when Herr Trautmann, the German Ambassador to China,
12 met Generalissimo Chiang Kai-shek on December 2, the
13 head of the Chinese Government revealed he had no
14 objection to starting peace negotiations on the basis
15 of the Japanese terms. And Dirksen asked the Foreign
16 Minister if there was no alteration in the peace terms
17 of the August plan yet.

18 "(18) The Foreign Minister, thereupon, had
19 the Director of East Asiatic Bureau confer with the
20 competent authorities of the War Office and the
21 Ministry of the Navy, and it was made clear that both
22 the army and the navy had no objection to the peace
23 terms of the August plan.

24 "The question, however, had to be submitted
25 to the Liaison Conference of the government and the

1 army and the navy which had been set up a little before
2 that, and it was placed on the agenda for the meeting
3 of December 20. The fall of Nanking on December 13 had
4 considerably stiffened the general feelings of the
5 Japanese public towards China. Home Minister SUYETSUGU,
6 for example, was supported by such general feelings.
7 Claiming to give a smashing blow to China, he was known
8 for his drastic attitude towards China, and was
9 naturally against the peace negotiation itself. Unpre-
10 cedentedly as Home Minister, he attended the December 20
11 meeting of the Liaison Conference which was held to
12 deliberate upon the peace terms for China. He laid
13 an extremely strong opinion before the conference, and,
14 after a heated discussion, the conference decided upon
15 the four fundamental terms of peace for China, which
16 were naturally far less compromising than those of
17 the August plan.

18 "The four terms were as follows:

19 "1) The Chinese Government is requested to
20 give up its pro-Comintern and anti-Japanese, anti-
21 Manchoukuo policy, and cooperate with Japan and Man-
22 choukuo in their anti-Comintern policy.

23 "2) Unfortified zones shall be set up in
24 needed areas, and special administrative machineries
25 shall be established in the said areas.

1 "3) Close economic relations shall be
2 created among Japan, Manchoukuo and China.

3 "4) The Chinese Government is requested to
4 make necessary reparations.

5 "The Japanese Government expected the reply
6 to the above to be given before January 5 or 6 of the
7 following year.

8 "(19) These four terms of peace were presented
9 to Ambassador Dirksen with a detailed explanation.
10 They were submitted to the Chinese Government through
11 Ambassador Trautmann on December 26, but no reply was
12 obtained by the appointed date.

13 "The Foreign Office urged the reply several
14 times through the German Government, and as late as
15 January 13, the Chinese Foreign Minister replied to
16 German Ambassador Trautmann to the effect that, as the
17 Japanese peace terms covered too wide a scope, the
18 Chinese Government wished to know their further details
19 in order to make the final decision thereof. Ambassador
20 Dirksen conveyed the Chinese reply to the Japanese
21 Foreign Minister on January 14.

22 "As to the contents of the four fundamental
23 terms, however, a detailed explanation had already
24 been given through the German Government. It was quite
25 incomprehensible to us that the Chinese Government

1 should make a request to know the contents of the terms
2 to further details. In the light of the progress of
3 the past negotiations between the two governments
4 since the outbreak of the incident, the Japanese Govern-
5 ment could not but regard it as an artifice to delay
6 the settlement on purpose. The Foreign Office was
7 greatly discouraged by this reply of the Chinese Govern-
8 ment.

9 "The reply of the Chinese Foreign Minister
10 was brought up for discussion at the cabinet council
11 of January 15. The council also regarded it as an
12 artifice to delay intentionally the settlement of the
13 incident, and had to decide to close the negotiation.
14 The declaration 'not to deal with the Nationalist Govern-
15 ment hereafter' was made in this way on January 16.

16 "(20) I should like to relate, by the way,
17 what I know about the circumstances which caused the
18 Japanese Government to use, in the manifestation of
19 its serious intention, such a colloquial expression as
20 'not to deal with the Nationalist Government hereafter,'
21 which is not necessarily clear in meaning. It was first
22 proposed to use an expression 'to discontinue the
23 negotiation,' at the conference of the competent
24 authorities of the ministries concerned. But the
25 Foreign Office opposed to using such a plain and definite

1 expression, and it was decided, after careful considera-
2 tion, that the more or less vague expression as the
3 above-mentioned should be adopted. This is a proof
4 that the Japanese Foreign Office had the intention to
5 leave scope enough to resume the negotiation for peace
6 with the Nationalist Government. In March of that year,
7 the Italian authorities at Shanghai frequently trans-
8 mitted to the Japanese Embassy there the intention of
9 the Nationalist Government concerning the peace terms
10 which was sounded by the Italian Councillor then at
11 Hankao. And I remember Foreign Minister HIROTA gave a
12 tacit consent to the Japanese Embassy in China keeping
13 in touch with the Italian diplomatic authorities.

14 "(21) Foreign Minister HIROTA always gave
15 careful consideration to safeguarding the interests
16 of the third powers in China. Even after the outbreak
17 of the incident, he mentioned it several times in the
18 announcements of the government, and actually exerted
19 all his efforts in its favour. I can cite a striking
20 instance of such efforts of the Foreign Minister. In
21 April or May, 1938, he ordered me, in response to an
22 offer of the British Government, to discuss with
23 Ambassador Craigie the questions regarding the main-
24 tenance of the Chinese customs system and the modifi-
25 cation of tariff. We met several times, and, as a

1 result, an agreement, satisfactory to both parties,
2 was concluded, and made public. This agreement
3 restrained the modification of the tariff rates, in
4 the light of the real state of things in those days,
5 within a certain limit so that it might not be against
6 the interests of the third powers. It also aimed at
7 forestalling the seizure of the Chinese customs by the
8 Japanese Army. Ambassador Craigie had kept close con-
9 tact with the Ambassadors of the United States and
10 France before the agreement was arrived at, and the
11 British Ambassador confidentially told me that both
12 countries had no objection to the said agreement. In
13 this way, Foreign Minister HIROTA exerted his efforts
14 to keep the effects of military measures upon the
15 interests of the third powers within the least limit,
16 through negotiations with those third powers.

17 "(22) The originals as well as the copies
18 of the telegrams referred to in the present deposition,
19 in (7) and (8), having been lost in the fire, they
20 are not found in the files of the Foreign Office."

21 At this time, if the Tribunal please, I would
22 like to offer in evidence defense document 2536, being
23 the deposition of HAYASHI, Kaoru, of the Foreign Office,
24 attesting to the fact that the telegrams referred to
25 in the affidavit of the witness HORINOUCI, paragraphs

1 7 and 8, were lost by fire during the war and cannot
2 be found in the files of the Foreign Office.

3 THE PRESIDENT: Admitted on the usual terms.

4 CLERK OF THE COURT: Defense document 2536
5 will receive exhibit No. 3261.

6 (Whereupon, the document above
7 referred to was marked defense exhibit
8 No. 3261 and received in evidence.)
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1 MR. YAMAOKA: I will not read this exhibit.

2 In view of the fact that the defense docu-
3 ment 2147, the entire affidavit of this witness,
4 having been rejected, I hereby withdraw No. 57 on our
5 order of proof, defense document 2537.

6 With the permission of the Tribunal, I
7 should like to ask about three or four questions in
8 addition to this affidavit.

9 May the witness be handed defense document
10 2146, exhibit 3260.

11 (Whereupon, a document was handed
12 to the witness.)

13 BY MR. YAMAOKA (Continued):

14 Q In paragraph 16 of your affidavit, you men-
15 tion that the British Ambassador, Sir Robert Craigie,
16 arrived in Tokyo in September, 1937. Do you know
17 whether Foreign Minister HIROTA had conversations with
18 the British Ambassador before October 27, 1937?

19 A I do remember.

20 Q Will the witness --

21 A (Continuing) Foreign Minister HIROTA made an
22 unofficial request to British Ambassador Craigie to
23 offer his good offices in enabling Japan and China to
24 conduct direct negotiations between themselves. I
25 remember + at the conversations between the two in

1 connection with this request were held from the end
2 of September to the beginning of October.

3 Since the beginning of the incident, Mr.
4 HIROTA had met several times with the Chinese Am-
5 bassador, Mr. Hsu Shih-ying, and had talked with him
6 with a view to settling the matter.

7 MR. COMYNS CARR: One moment. Without con-
8 trol of my friend, the witness is wandering on to tell
9 us a number of matters he wasn't asked. The one
10 essential question, before any of this can be admiss-
11 ible, hasn't been asked or answered, namely, whether
12 the witness was present at the conversations with Sir
13 Robert Craigie, of which the witness is speaking. In
14 my submission, until that is cleared up, the evidence
15 should not be taken.

16 THE PRESIDENT: We would permit him to say
17 what HIROTA told him about that, if we are consistent.

18 MR. COMYNS CARR: With respect, your Honor,
19 in my submission, it would not be inconsistent with
20 previous rulings to refuse to allow that to be done.

21 Hearsay has frequently been admitted, but not,
22 as far as I know, in a case where the person from whom
23 it was obtained is present in court and capable of
24 giving evidence.

25 THE PRESIDENT: A delicate question arises as

1 to whether we should refuse to permit hearsay in order
2 to force an accused into the box.

3 MR. COMYNS CARR: Your Honor, in my submission,
4 it is not a question of forcing him into the box. It
5 is a question of giving him the choice of going into
6 the box or not having the evidence. What is happening --

7 THE PRESIDENT: That would force him into
8 the box, perhaps; that would be to exert pressure.

9 MR. COMYNS CARR: What my friend is seeking
10 to do now is get his evidence in at secondhand with-
11 out cross-examination.

12 THE PRESIDENT: That has been happening
13 throughout the individual cases. This is the first
14 time it has been sharply raised.

15 What my Colleagues think, I do not know;
16 and I am not prepared to make any pronouncement with-
17 out consulting them.

18 To raise this question, I will ask him: Was
19 he present at the conversations to which he deposes,
20 that is, between Ambassador Craigie and the accused
21 HIROTA?

22 MR. YAMAOKA: Is it the desire of the Tri-
23 bunal that I ask it, or did I hear correctly --

24 THE PRESIDENT: Will the witness answer?
25 Was he present at those conversations?

1 THE WITNESS: I did not attend on every
2 occasion.

3 THE PRESIDENT: Well, what he says about the
4 conversations he did not hear could only be from hear-
5 say, from somebody that was present, and if you press
6 him to answer as to conversations which he did not
7 hear, then I shall take the views of my Colleagues as
8 to whether such questions should be permitted.

9 MR. YAMAOKA: If the Tribunal please --

10 THE PRESIDENT: I understand such answers are
11 objected to -- such questions are objected to by Mr.
12 Comyns Carr.

13 MR. YAMAOKA: I had intended, if your Honor
14 please, before the witness commenced giving the answer,
15 asking further questions to lay the foundation for his
16 answer, and I should like to be permitted to ask a
17 further question of this witness which will probably
18 clear that question up.

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1 BY MR. YAMAOKA (Continued):

2 Q Did Mr. HIROTA report to you the conversations
3 that he held with Ambassador Craigie?

4 A I always heard the Foreign Minister's reports --
5 The Foreign Minister always told me about these matters.
6 Also, Ambassador Craigie himself later told me that
7 "On such and such a day I had had such and such a
8 conversation with Mr. HIROTA -- on some occasions."

9 Q And did you receive those reports from Mr.
10 HIROTA in your official capacity?

11 A Yes, as Foreign Vice-Minister it was my duty
12 to keep in very close touch with the Foreign Minister
13 on all such matters in the line of my official duties.

14 MR. YAMAOKA: Now, in the light of this
15 foundation, if the Tribunal please, does it still desire
16 that the question of hearsay be further argued?

17 THE PRESIDENT: If he says he heard the report
18 of the conversation from HIROTA, we have to decide
19 whether we will allow evidence of what the conversation
20 was to be given.

21 MR. YAMAOKA: If the Tribunal please, the wit-
22 ness had already answered that he received these reports
23 and held these conversations with Mr. HIROTA in his
24 official capacity, and under such circumstances, I think
25 the application of the hearsay rule has a little differen

1 BY MR. YAMAOKA (Continued):

2 Q Did Mr. HIROTA report to you the conversations
3 that he held with Ambassador Craigie?

4 A I always heard the Foreign Minister's reports --
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7 "On such and such a day I had had such and such a
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22 ness had already answered that he received these reports
23 and held these conversations with Mr. HIROTA in his
24 official capacity, and under such circumstances, I think
25 the application of the hearsay rule has a little differen

1 tenor.

2 THE PRESIDENT: We are not bound by any rules
3 of evidence, by any rules of procedure, but we do get
4 the best evidence that we can in all circumstances.

5 MR. YAMAOKA: I wish to add, if the Tribunal
6 please, that during the entire course of these proceed-
7 ings, the Tribunal has often received hearsay and
8 further testimony based on hearsay, also. And many
9 witnesses heretofore produced by the prosecution as
10 well as by the defense have testified as to conversations
11 they have had with many of the accused, and under --

12 THE PRESIDENT: By a majority hearsay will not
13 be admitted in such circumstances.

14 If you are relying on what HIROTA told the
15 witness, that witness will not be allowed to give that
16 evidence. HIROTA must give that evidence, if it is
17 given at all.

18 MR. YAMAOKA: Well, if the Tribunal please, in
19 the light of the importance of this question to the
20 other accused, I should desire to have the permission
21 of the Tribunal to have the defense counsel confer on
22 this matter and present a full argument on it at a later
23 date before a full Tribunal.

24 THE PRESIDENT: We are not averse to hearing
25 you fully. I think we all want to hear you fully, Mr.

1 Yamaoka. This is a matter of such serious importance
2 that we should have the views of the defense as a
3 whole put to us, and, as I am reminded, those of the
4 prosecution also.

5 MR. YAMAOKA: That is my view of the matter,
6 and that is the reason why I asked permission to have
7 this matter considered by the defense as a whole and
8 then the matter argued fully tomorrow morning, let us
9 say.

10 THE PRESIDENT: Mr. Comyns Carr.

11 MR. COMYNS CARR: Your Honor, I would just
12 like to make this clear: We have not raised objection
13 to witness' stating that one of the accused expressed
14 his policy to the witness, because there the policy is
15 the fact to be proved and a witness -- although it is
16 not so, may not carry so much weight with the Tribunal
17 as if the accused said it himself -- such a statement
18 is one which the witness is capable of making of his own
19 knowledge that HIROTA, say, or any other accused declared
20 his policy to be so and so. But, when it comes to proving
21 a fact such as a conversation or meeting which took place
22 in the absence of the witness and his source of knowledge
23 is a person who is sitting in court, whether in the dock
24 or out of it, then, in our submission, that is relaxing
25 the hearsay rule to an altogether unreasonable extent and

1 it is that point and that point only that I took
2 objection to.

3 THE PRESIDENT: I think we better stand the
4 witness down until we have decided this point on further
5 argument.

6 MR. YAMAOKA: If the Tribunal please, I could
7 withhold asking further questions along this line and
8 have my learned friend here continue with cross-examination
9 on other points in the affidavit.

10 THE PRESIDENT: At this late hour it is not
11 desirable to do that.

12 We will adjourn until half-past nine tomorrow
13 morning.

14 (Whereupon, at 1555, an adjournment was
15 taken until Wednesday, 1 October 1947, at 0930.)

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